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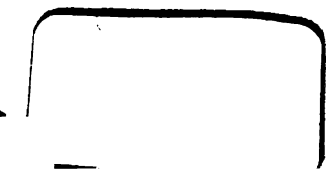
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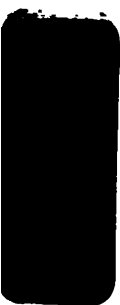
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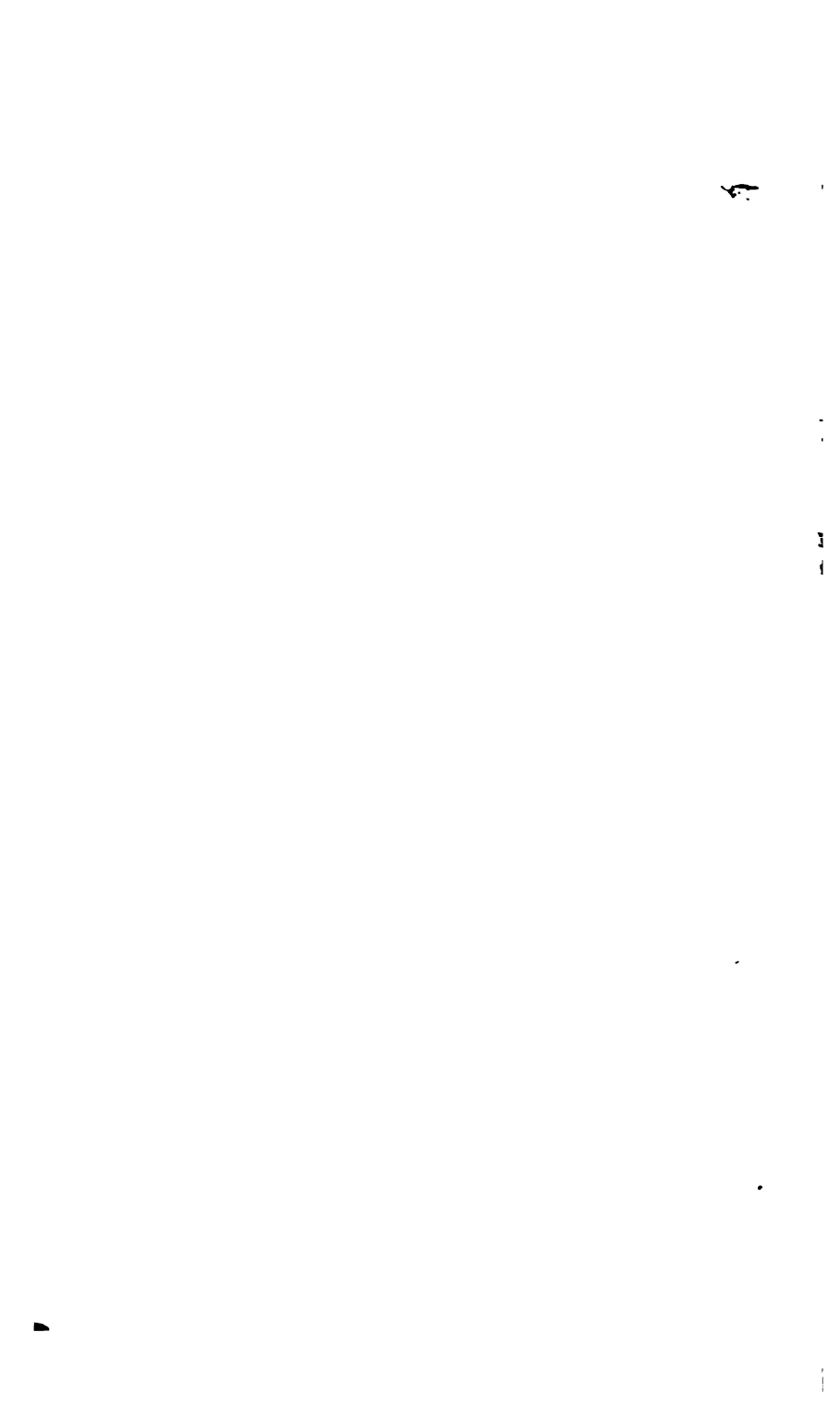
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THE
Law of Compensation,

BEING A

COLLECTION OF THE PUBLIC GENERAL ACTS

RELATING

TO COMPULSORY PURCHASE OF AND
INTERFERENCE WITH LAND,

WITH NOTES OF ALL THE CASES THEREON AND AN APPENDIX
OF REPORTS, FORMS, AND OF THE STATUTORY PROVISIONS
SPECIALLY APPLICABLE TO LONDON.

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PREFACE.

THIS Work contains, the Authors believe, a Collection of all the general statutory relating to the acquisition of land by Corporations, and Companies, and to the compensation to be made to Owners for the injury to their lands by the construction of works carried out by such public bodies. It also contains full notes of all the decided cases which bear upon the Law of Compensation.

The Lands Clauses Consolidation Act, 1845, is undoubtedly, the most important of these Statutes. It was passed with the view of consolidating in one General Act the provisions which had been usually inserted in the various Personal Acts, relating to the acquisition of land, and the compensation to be made to Owners in connection with such purchases. It may, therefore, be regarded as the foundation of the modern Law of Compensation. It has, accordingly, been placed first of all the Statutes included in this Work, and the various sections have been fully annotated. The Authors have endeavoured to indicate clearly the principles which underlie the cases in which Compensation is claimed, and the Procedure which has been stereotyped by the Statutes or by a long course of decided cases. A full list of *Precedents* will be found in the Appendix.

The other Statutes follow in chronological order, the cases dealing with the special subject-matter of each being noted and cross references given. A few Statutes passed prior to 1845, which are still in force, have been placed in the Appendix, as the Authors did not consider these of sufficient importance to make them depart from the order adopted. The provisions dealing with Compensation in London, being in their nature local rather than general, have been similarly dealt with; and will be found in the Appendix grouped together in chronological order.

The Report of the Committee of the House of Lords on Betterment, with the model clauses founded thereon, and also reports of cases on "re-instatement" and "special adaptability" have been added.

The cases cited are brought down to July of this year. Generally, only one reference has been given in the text; but full references to other reports are quoted in the Index of Cases, for the preparation of which the Authors are largely indebted to their learned friend, Mr. CAMPBELL JOHNSTON, of the Inner Temple. Considerable trouble has been taken to make the Index as full as possible.

J. H. B. B.

C. E. A.

TEMPLE,

December, 1895.

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THE LAW OF COMPENSATION.

THE LANDS CLAUSES CONSOLIDATION ACT, 1845.

8 VICT. c. 18.

An Act for consolidating in one Act certain provisions usually inserted in Acts authorizing the taking of lands for undertakings of a public nature. [8th May, 1845.]

[Whereas it is expedient to comprise in one general Act **Sect. 1.**
sundry provisions usually introduced into Acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: May it, therefore, please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That](a) this Act shall apply to every undertaking authorized by any Act which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such undertaking, and this Act

Act to apply to all undertakings authorized by Acts

Sect. 1. shall be incorporated with such Act ; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed, together therewith, as forming one Act.

hereafter
to be
passed.

(a) The words in brackets are repealed by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67), s. 1. The Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 8, enacts that every section of an Act shall have effect as a substantive enactment without introductory words.

Object of Act.—Although the preamble has been repealed the statute will no doubt still be construed with reference to the object for which it was passed. "It is to be borne in mind what the meaning of the Lands Clauses Consolidation Act was, and it cannot be more shortly described than by the preamble to the Act. I do not think it is possible to express the reason why that Act was passed, and its object, better than the Legislature itself has expressed it in that preamble" (per Lord BLACKBURN, *Metropolitan District Railway Company v. Sharpe*, L. R. 5 App. Cas. 425, at p. 440). Prior to 1845 such provisions were repeated in each Act authorising the taking of land, and came to be known as common form, but as there were frequently variations, more or less minute, considerable confusion resulted.

"This Act shall apply," &c.—This Act applies only to undertakings authorised by Act of Parliament passed after the 8th May, 1845.

Undertakings authorised prior to that date are not under the Act unless the authorising statute has been varied by a fresh Act passed subsequently, in which cases the Lands Clauses Consolidation Act would apply. Sir JOHN ROMILLY, M.R., said that he read this clause as meaning that "whenever there is an undertaking" for which "subsequently to the passing of the Lands Clauses Consolidation Act another Act passes which authorises the taking of other lands for that undertaking, then the Lands Clauses Consolidation Act applies to the whole undertaking as if it had always been applicable to it, so far as any of its provisions remain applicable or there is anything to be done under it." *Lancashire and Yorkshire Railway Company v. Evans*, 15 Beav. 322, 327 ; and see *Ex parte Eton College*, 20 L. J. Ch. 1.

The later Act may, however, exclude the application of the Lands Clauses Consolidation Act either expressly or by implication. See section 80 and cases there cited.

Undertakings or Works of a Public Nature.—As the Act was passed to consolidate provisions usually inserted in Acts authorising the taking of lands for undertakings of a public nature it does not apply to

Acts which, although they allow the purchase or taking of land, are in their nature purely private Acts. Private Acts deal with purely personal matters, and usually contain provision that they shall not be deemed public. See the Interpretation Act, 1889, s. 9. This Act applies to undertakings of a quasi-public kind authorised by what are called local and personal, or local Acts.

Seet. 1.
—

Thus an Act passed for confirming and giving effect to an agreement for a lease by the Westminster Improvement Commissioners to the Westminster Palace Hotel Company was held not to incorporate the Lands Clauses Consolidation Act on the ground that their Act was in the nature of a private estate Bill, and expressly stated not to be a public Act. The hotel company were held, therefore, not to be bound to summon a jury to assess the amount of compensation due for obstructing ancient lights by building on the site so leased to them. *Wale v. Westminster Hotel Company*, 8 C. B. (N.S.) 276.

"And this Act shall be Incorporated," &c.—This provision incorporates this Act in every Act to which it would apply. No special provision for its incorporation is therefore necessary. Local Acts usually contain such provision, and numerous public general Acts also incorporate it, either in whole or in part or with variations.

For a list of the public general Acts incorporating the Lands Clauses Consolidation Acts, see "Introduction."

The Lands Clauses Consolidation Act, 1845; the Lands Clauses Consolidation Acts Amendment Act, 1860; the Lands Clauses Consolidation Act, 1869; and the Lands Clauses (Umpire) Act, 1883, are construed as one, and are, therefore, incorporated together.

"Save so far as they shall be expressly varied."—In construing the Acts together, the object of the Lands Clauses Consolidation Act is to be borne in mind. It is to be followed unless the special Act by express words or necessary intendment varies or excepts it. It is not necessary that there should be express words saying this particular section or provision shall not apply, but there must be something indicating an express intention. A mere variation from the ordinary type or form would not be sufficient to prevent this clause applying, but a variation showing that the provision was inapplicable would have the same effect as if it were expressly varied. *Metropolitan District Railway Company v. Sharpe*, L. R. 5 A. C. 425; *Ex parte Rayner*, 3 Q. B. D. 446; *Reg. v. Lord Mayor of London*, L. R. 2 Q. B. 292.

If the particular Act gives a rule on the subject the expression of that rule would amount to an excepting of the subject matter of the rule out of the Lands Clauses Consolidation Act. If the rule, however, applies only to a portion of the subject the Lands Clauses Consolidation Act will remain incorporated as to the other and separate part of the same subject. *In re Westminster Estate*, 4 De G. J. & S. 232.

Thus where an improvement Act authorised certain improvements and contained provisions for compensation in connection with these, and also contained provisions authorising other improvements without specially providing for compensation in respect of these latter, it was held that the fact that it was expressly given in the former cases was not inconsistent with the intention that it should be given in the other

Sect. 1. cases by virtue of section 68 of the Lands Clauses Consolidation Act. *Reg. v. St. Luke's, Chelsea*, L. R. 7 Q. B. 148.

As to incorporation and construction, see sections 5, 34, 80.

Interpretations in this Act: And with respect to the construction of this Act and of Acts to be incorporated therewith, be it enacted as follows :

"Special Act :" 2. The expression "the special Act," used in this Act, shall be construed to mean any Act which shall be hereafter passed which shall authorise the taking of lands for the undertaking to which the same relates, and with which this Act shall be so incorporated as aforesaid ; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used ;

"prescribed." and the expression "the works" or "the undertaking" shall mean the works or undertaking, of whatever nature, which shall by the special Act be authorized to be executed ; and

"the works :" and the expression "the promoters of the undertaking" shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Act empowered to execute such works or undertaking.

"Promoters of the undertaking."

The "Special Act."—In some public general Acts provision is made as to what is to be deemed to be the special Act. It is usually either the Act itself or the Act and any Act confirming any order made in pursuance thereof. In others there is no such provision.

The "Promoters of the Undertaking."—By section 7 of the Lands Clauses Consolidation Acts (1845) Amendment Act, 1860, Her Majesty's principal Secretary of State for the time being shall be deemed to be "the promoters of the undertaking" within the meaning of the Act.

Interpretations in this and the special Act: 3. The following words and expressions, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the

INTERPRETATIONS.

subject or context repugnant to such construction ; that is Sect. 3.
to say,

Words importing the singular number only shall include ^{Number :}
the plural number, and words importing the plural
number only shall include the singular number :

Words importing the masculine gender only shall include ^{Gender :}
females :

The word " lands " shall extend to messuages, lands, tene- ^{" Lands}
ments, and hereditaments of any tenure :

The word " lease " shall include an agreement for a lease : ^{" Lease :}

The word " month " shall mean calendar month : ^{" Month : "}

The expression " superior courts " shall mean Her Majesty's ^{" Superior}
superior courts of record at *Westminster* or *Dublin*, as ^{courts : "}
the case may require :

The word " oath " shall include affirmation in the case of ^{" Oath : "}
Quakers, or other declaration lawfully substituted for an
oath in the case of any other persons exempted by law
from the necessity of taking an oath :

The word " county " shall include any riding or other like ^{" County : "}
division of a county, and shall also include county of a
city or county of a town :

The word " sheriff " shall include under sheriff, or other ^{" the}
legally competent deputy ; and where any matter in ^{sheriff : "}
relation to any land is required to be done by any
sheriff, or by any clerk of the peace, the expression " the ^{" the clerk}
sheriff, " or the expression " the clerk of the peace, " ^{of the}
shall in such case be construed to mean the sheriff or ^{peace : "}
the clerk of the peace of the county, city, borough,
liberty, cinque port, or place where such lands shall be
situate ; and if the lands in question, being the property

Sect. 3.

of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate :

"Justices :"

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter ; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter ; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together :

"Two justices :"

"Owner :"

Where under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any Act shall be authorised or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking :

"the Bank."

The expression "the Bank" shall mean the Bank of *England* where the same shall relate to moneys to be paid or deposited in respect of lands situate in *England* and shall mean the Bank of *Ireland* where the same

shall relate to moneys to be paid or deposited in respect of lands situate in Ireland. Sect. 3.

"In this and in the special Act."—In certain of the Acts which incorporate the Lands Clauses Acts some of the above-mentioned words are defined in a manner different from those given here. In these cases the definitions of the incorporating Act will be the accepted meanings, as the words here defined are only to have these meanings if the context is not repugnant, and the application of the Lands Clauses Consolidation Act will not be altered by such different meaning. *Clark v. School Board for London*, L. R. 9 Ch. 120; and see cases below to note "Lands."

Throughout the Act itself these meanings are to be accepted only when there is nothing repugnant in the subject or context. Thus in section 39, the word "sheriff" means the high sheriff, and not as in this definition. *Worsley v. Devon Railway Company*, 16 Q. B. 539.

"The word 'Lands.'"—The Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3, has enacted that in every Act passed after 1850, unless the contrary intention appears, "the expression 'land' shall include messuages, tenements, and hereditaments, houses and buildings of any tenure." This is practically a re-enactment of a part of Lord BROUGHAM's Act (13 & 14 Vict. c. 21), s. 4, which this Act repeals, and it does not appear to affect the decisions bearing upon this point.

"Messuage."—This word technically means a dwelling-house, with the outbuildings adjoining: the orchard, garden, and curtilage—practically whatever is annexed to and enjoyed with the house for its more convenient occupation (see Sheppard's "Touchstone," p. 94; and section 92, post, note "House").

"Lands."—The expression, "lands, tenements, and hereditaments" was in earlier English law used in opposition to "goods and chattels," a distinction somewhat similar to our modern terms of real and personal property. By "lands" is meant not only the surface of the earth, but everything under it as mines and quarries, and everything over it as water, buildings, trees, and air. A grant of a lake to be effective must be of so many acres of land covered with water. The legal maxim is *cujus est solum ejus est usque ad cælum* (Sheppard's "Touchstone," p. 90; 2 "Blackstone," p. 18, and as to mines being included, see *Errington v. Metropolitan District Railway Company*, 19 Ch. D. 559, 568.

"Tenements."—Although this word is used as synonymous with *messuage*, it has a wider technical meaning—viz., everything that could be the subject of feudal tenure, and includes besides land, rights of turbary, rights of common, and similar rights (2 "Blackstone," pp. 16, 17).

"Hereditaments" was the word of largest extent and included all that could be inherited, "corporeal or incorporeal, personal or mixt." It included nearly every tenement, and also various other rights over land. Corporeal hereditaments imply the possession of the land; in-

Sect. 3. corporeal a right over land in possession of another. BLACKSTONE says the incorporeal are principally of ten sorts—"advowsons, tithes, commons, ways, offices, dignities, franchises, corodies or pensions, annuities and rents" (2 Blackstone's "Commentary," p. 21). There are, however, other rights over land which are hereditaments. Tunnels are usually corporeal hereditaments as they are interests in land implying possession, and not merely rights over land. See *Fowler v. Metropolitan Railway* (1893), A. C. 416.

"*Of any tenure.*"—There has been some conflict in judicial opinion as to the extent to which these words affected the meaning of hereditaments, and they have been by some authorities construed as limiting the meaning in such a way as to exclude those which were incorporeal as not being of any tenure. See *Pinchin v. London and Blackwall Railway Company*, 5 D. M. & G. 851, 861; *In re Metropolitan District Railway Company and Cosh*, 13 Ch. D. 607, 616. The point, however, may now be taken as decided, the House of Lords having unanimously expressed an opinion that incorporeal hereditaments are included in the definition, and that these words are to be read as "of whatever tenure if any." The context and the special Act must, however, be regarded to discover the extent of the meaning in each particular instance. In many leading clauses of the Lands Clauses Consolidation Act (as, for example, the eighteenth), the word "lands," by reason of the context, is limited to corporeal hereditaments and will not include easements. *Great Western Railway Company v. Swindon and Cheltenham Railway Company*, 9 App. Cas. 787, 800, 808. It is limited also in many cases so as not to include strata of land unless special power is given to the undertakers. *Hill v. Midland Railway Company*, 21 Ch. D. 143. See further, sections 18, 68.

"**Superior Courts.**"—These will now mean the Supreme Court of Judicature in England, including Her Majesty's High Court of Justice and Her Majesty's Court of Appeal, and the Supreme Court of Judicature in Ireland, including Her Majesty's High Court of Justice in Ireland, and Her Majesty's Court of Appeal in Ireland (36 & 37 Vict. c. 66, ss. 3, 4, and 40 & 41 Vict. c. 66, ss. 4, 5).

"**Oath.**"—Every person is now permitted to affirm who objects to be sworn and states as the ground of such objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief (Oaths Act, 1888, 51 & 52 Vict. c. 46, s. 1).

"**Sheriff.**"—In the enactments throughout the Act relating to the reference to a jury, the provisions applicable to sheriff apply to every coroner or person lawfully acting in his place (section 40).

Within the city and liberty of Westminster, the high bailiff of such city and liberty or his deputy shall be deemed to be substituted for the sheriff in the same enactments (Lands Clauses Consolidation Act Amendment Act, 1869, s. 3).

"*Where such lands shall be situate.*"—Where the lands injuriously affected are within a city and the works causing the injury are in the county, the jury of the city are competent to try the question, even

INTERPRETATIONS.

when the injury occasioned is by cutting off communication on the county side with a ferry over the river, the ferry being appurtenant to the land in the city, the boundary being in the midst of the river. *Reg. v. Great Northern Railway Company*, 14 Q. B. 25. Sect. 3

"Justices."—The territorial jurisdiction of justices is limited to the area, or place for which their commission is issued. Judicial duties cannot be exercised outside such place or area, but ministerial duties, such as administering oaths for affidavits, can be so exercised. See *Kerr v. Ailsa*, 1 Macq. H. L. 736.

"Who shall not be interested in the matter."—The general principle is *nemo debet esse judex in propria sua causa*. Any direct pecuniary interest, however small, will disqualify. Thus, where justices who were shareholders in a railway company, convicted a man for travelling with a wrong ticket on that railway, they were held to be disqualified. *R. v. Hammond*, 9 L. T. 423, and see *Reg. v. Commissioners of Sewers for Fobbing*, 11 App. Cases. 450; *Reg. v. Lee*, 9 Q. B. D. 394; *Reg. v. Gaisford* (1892), 1 Q. B. 381.

The pecuniary interest must be direct, and, if indirect, it will not disqualify unless likelihood of bias is shown; thus an interest, depending upon the completion of a parliamentary arrangement between certain companies is too remote. *Reg. v. Manchester, Sheffield, and Lincolnshire Railway Company*, L. R. 2 Q. B. 336, and see *Reg. v. Rand*, L. R. 1 Q. B. 220.

The fact that justices are shareholders in shipping companies, the ships of which were insured by associations that were members of a confederation to which the prosecutor was agent is not sufficient to disqualify. *Reg. v. Mackenzie* [1892], 2 Q. B. 519.

If the magistrate has no pecuniary interest he will be disqualified, if he has such a substantial interest, other than pecuniary in the result of the hearing as to make it likely he will have a bias but not otherwise. The mere fact that he has been subpoenaed as a witness, and has advised a settlement will not disqualify. *Reg. v. Farrant*, 20 Q. B. D. 58; *Reg. v. Tooke*, 32 W. R. 753.

By certain statutes, justices are expressly given power to hear and determine certain matters, although they have an interest in the result. In these cases the pecuniary interest is small, as, for example, the justice may be a ratepayer in the parish in connection with which a question is raised. See *Municipal Corporations Act, 1882*, s. 158, sub-sect. (2). But notwithstanding such acts, the justices will be disqualified if there is unmistakable bias shown, as for example, by taking active part in proceedings prior to the trial. *R. v. Harrison*, 1 Q. B. 174; *Reg. v. Allen*, 33 L. J. M. C. 98; *Reg. v. Henley* [1892], 1 Q. B. 504; *Reg. v. London County Council* [1892], 1 Q. B. 190; *Reg. v. Lee*, 9 Q. B. D. 394; *Reg. v. St. Albans*, 9 Q. B. D. 454. If there is strong probability of bias, as where the justice is an appellant against a rate, he is disqualified from hearing other appeals of a similar nature. *R. v. Justices of Yarmouth*, 31 L. J. M. C. 39.

The disqualification of a justice on the ground of interest may be waived by the parties, as the proviso that he shall not be interested is merely declaratory of the common law, and not obligatory, and at

Sect. 3. common law, the objection could always be waived. Such waiver will be presumed if after knowledge of interest the parties either request the justice to act, or acquiesce in his acting, and in order to disturb his ruling the party applying must fully deny knowledge of such interest. *Wakefield Local Board v. West Riding and Grimsby Railway Company*, L. R. 1 Q. B. 84, upon the same words in the Railway Clauses Consolidation Act (8 Vict. c. 20), s. 3, and see as to the common law, *R. v. Richmond JJ.*, 8 Cox C. C. 314; *R. v. Kent JJ.*, 44 J. P. 296, and "Stone's Justices' Manual," pp. 728, *et seq.*, 26th edit.

If the parties acquiesce under a misunderstanding as to his interest, the order will be quashed if the conduct of the justice shows real bias. Thus a justice at a railway rating appeal was not objected to, as he was believed to be merely an *ex officio* member of the board of guardians, but it was afterwards discovered that he had been actively engaged at meetings defending the appeal. The order was set aside on the ground of probability of bias. *R. v. Cumberland JJ.*, 58 L. T. 491.

Two Justices.—Any one of the magistrates of the metropolitan police courts, and every stipendiary magistrate for any county, borough or place, have power to do alone what may be done by two justices of the peace (21 & 22 Vict. c. 73, s. 1; 2 & 3 Vict. c. 71, s. 16; and 42 & 43 Vict. c. 49, s. 20, sub-sect. (10)).

The expression *two justices* means at least two, and the proceedings are not vitiated by there being more than two present. *Reg. v. Rochdale Improvement Commissioners*, 2 Jur. (N.S.) 861.

"**Owner.**"—The persons who are enabled to sell and convey lands are stated in section 7.

Short
title of
the Act.

4. [*And be it enacted, That*](a) in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845."

(a) Repealed by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67), s. 1, and sched.

By the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 23, it is provided that in any Act, public, local and personal, or private passed after the 1st January, 1890, unless the contrary intention appears, the expression "Lands Clauses Acts" shall mean—

As respects England and Wales, the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), the Lands Clauses Consolidation Acts Amendment Act, 1860 (23 & 24 Vict. c. 106), the Lands Clauses Consolidation Act 1869 (32 & 33 Vict. c. 18), and the Lands Clauses (Umpire) Act, 1883 (46 & 47 Vict. c. 15), and any Acts for the time being in force amending the same.

"**In legal instruments.**"—Section 35 of the Interpretation Act, 1889, extends this to "in any Act, instrument or document."

Form in
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tions of

5. And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed

some portion only of the provisions of this Act; be it there- **Sect. 5.**
 fore enacted, that, for the purpose of making any such incor- this Act
 poration, it shall be sufficient in any such Act to enact that may be in-
 the clauses of this Act with respect to the matter so proposed corporated
 to be incorporated (describing such matter as it is described with other
 in this Act in the words introductory to the enactment with Acts.
 respect to such matter), shall be incorporated with such Act,
 and thereupon all the clauses and provisions of this Act with
 respect to the matter so incorporated shall, save so far as they
 shall be expressly varied or excepted by such Act, form part
 of such Act, and such Act shall be construed as if the sub-
 stance of such clauses and provisions were set forth therein
 with reference to the matter to which such Act shall relate.

By the Interpretation Act, 1889, it is enacted that in any Act passed after the 1st January, 1890, a description or citation of a portion of another Act shall, unless the contrary intention appears, be construed as including the word section, or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation. 52 & 53 Vict. c. 63, s. 35, sub-sect. (3).

"WORDS INTRODUCTORY TO THE ENACTMENT WITH RESPECT TO SUCH MATTER."

The different headings with the clauses under them are as follows:—

SECTS.

- 6— 15. The purchase of lands by agreement.
- 16— 68. The purchase and taking of lands otherwise than by agree-
ment.
- 69— 80. The purchase money or compensation coming to parties
having limited interests, or prevented from treating, or
not making title.
- 81— 83. The conveyances of land.
- 84— 91. The entry upon lands by the promoters of the undertaking.
- 92. As to selling part of a house.
- 93— 94. Small portions of intersected land.
- 95— 98. Copyhold lands.
- 99—107. Copyhold lands, being common or waste lands.
- 108—114. Lands subject to mortgage.
- 115—118. Lands charged with any rent service, rentcharge, or chief or
other rent, or other payment or incumbrance not herein-
before provided for.
- 119—122. Lands subject to leases.
- 123. Limit of time for compulsory purchase.
- 124—126. Interests in land which have by mistake been omitted to be
purchased.

Sect. 5. Sects.

- 127—132. Lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof.
133. Land tax and poor's rate to be made good.
134. Service of notices upon company.
135. Tender of amends.
- 136—149. The recovery of forfeitures, penalties, and costs.
- 150—151. The provision to be made for affording access to the special Act by all parties interested.

The clauses relating to the different subjects were thus grouped together so that they might readily be referred to in the special Acts.

In order to avoid the necessity of inserting *seriatim* the clauses to be incorporated or to be excluded in an Act which it is intended shall incorporate part only of the provisions ; the partial incorporations may be made by incorporating or excluding in the mass the sections falling under a particular heading or title.

If the words of the heading are used in the special Act either to include or exclude the enactments dealing with any matter, all the sections under that heading must be deemed to be included or excluded, as the case may be. Thus, an Act which incorporates the Lands Clauses Consolidation Act, 1845, but excludes the provisions of that Act "relating to the purchase and taking of lands otherwise than by agreement," thereby excludes all the sections from and to and including sections 16—68 ; compensation, therefore, for the injurious affecting of lands cannot be recovered on the basis that section 68 is incorporated. *Ferrar v. Commissioners of Sewers in the City of London*, L. R. 4 Exch. 227, followed in *Dunsey v. Mayor of London*, 38 L. J. C. P. 298.

The same principle was laid down *R. v. Lord Mayor of London*, L. R. 2 Q. B. 292, where it was held that an Act, excepting provisions in the same manner as in the above cases, excluded only sections 16—68, and that the other clauses which relate to the purchase of land otherwise than by agreement not coming under that heading were not excepted.

If, however, the local Act does not use the words of the heading, the same rule does not apply ; thus, an Act which excepts so much of the Lands Clauses Consolidation Act, 1845, as relates *exclusively* to the purchase and taking of lands by compulsion does not thereby except section 68, as that section, although inserted among the clauses which relate to the taking of lands by compulsion, does not relate *exclusively* to the taking of lands by compulsion. See per Lord CRANWORTH in *Broadbent v. Imperial Gas Light Company*, 7 De G. M. & G. 436, 447 ; S. C. in the Lords, 9 H. L. Cases, 600, where the point was not taken.

Construction.—Much diversity of opinion has existed as to the effect to be given to these introductory headings in construing the clauses under them. The general result is that they are to be regarded as something more than marginal notes, being in the nature of preambles, but their effect would appear to be a matter of construction in each particular case.

In *Hammersmith Railway Company v. Brand*, L. R. 4 H. L. 171, Lord CHELMSFORD (p. 203), speaking of the headings in the Railway Clauses Act, said that they "may be usefully referred to, to determine

the sense of any doubtful expression in a section ranged under a particular heading." But in the same case, Lord CAIRNS (p. 216), said that "the framing of the Lands Clauses Act shows that it is even dangerous to trust to the headings which occur at the commencement of these *fasciculi* of clauses, for the purpose of restraining or confining the natural operations of the words which you find in the various clauses under these headings." Sect. 5.

In the *Eastern Counties Railway Company v. Marriage*, 9 H. L. Cas. 32, the subject was fully discussed. The opinions of the common law judges were taken by the lords, and there was much diversity as to the effect to be given to these headings. The point at issue was as to whether the words "such lands" in section 94 of the Lands Clauses Consolidation Act, 1845, referred to the lands mentioned in the previous section or in the heading to the two sections. In the result, it was held that the lands referred to were those in the heading on the ground that such reading gave the more reasonable construction, but no general principle was laid down.

See as to headings of this kind in other statutes. *Bryan v. Child*, 5 Ex. 368, 374; *Latham v. Lafone*, L. R. 2 Ex. 115, 119; *Lang v. Kerr*, L. R. 3 App. Cas. 529, 536.

As to incorporation and construction, see section 1.

And with respect to the purchase of lands by agreement, be it enacted as follows :

6. Subject to the provisions of this and the special Act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorized to be taken, and which shall be required for the purposes of such Act, and with all parties having any estate or interest in such lands, or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever. Power to purchase Lands by Agreement.

"Purchase of Lands by Agreement."—This heading includes sections 6—15. As to effect of heading, see note to section 5.

"The Promoters of the Undertaking."—See definition in section 5. They are the parties empowered by the special Act to execute the undertaking.

Sometimes agreements for the purchase of lands are made by the promoters of the company prior to its incorporation. At common law such agreements are not binding on the company, and the company cannot ratify them so as to pass the liability from the promoters (*Kelner v. Baxter*, L. R. 2 C. P. 175), but the company could of course enter into a new contract on the same terms as the old and in substitution for it with the consent of the parties.

Sect. 6. In the case of railways to be constructed under the Railways Construction Facilities Act (27 & 28 Vict. c. 121), it is enacted by section 30 of that Act that:—

“Contracts relative to the purchase or taking of lands for the railway, entered into by the promoters before the incorporation of the company by certificate, shall be as binding on the company as if they had been entered into by the company” (see *post*).

The promoters in this section meaning the persons or company intending to apply for a certificate under the Act.

These agreements must, however, be of such a nature that the company could itself have entered into, otherwise the company will not be bound. *Shrewsbury v. North Staffordshire Railway Company*, L. R. 1 Eq. 593.

An agreement for the purchase of land made by promoters before incorporation in pursuance of this section, is not within the Lands Clauses Act, even although the Act authorising the undertaking incorporates it, and costs of a reference to a surveyor under the agreement, if not provided for in the agreement, could not be recovered from the company. *Catling v. Great Northern Railway Company*, 18 W. R. 121.

For cases on this section see “Browne and Theobald’s Law of Railways,” 2nd edit., p. 535.

“**To Agree.**”—The agreement must conform to the general law, and must be in writing and stamped. At the common law corporate bodies can contract only by means of their common seal, and contracts made with them which are not sealed will be invalid and will not bind them. 1 Blackst. Com. 475; *Finlay v. Bristol and Exeter Railway Company*, 21 L. J. Ex. 117.

Equity, however, where there has been part performance in which the corporation has acquiesced will, if the remedy is applicable, decree specific performance. *Laird v. Birkenhead Railway*, 29 L. J. Ch. 218; *Wilson v. West Hartlepool Railway*, 34 L. J. Ch. 241; *London and Birmingham Railway v. Winter*, Cr. & Ph. 57; and see *Crampton v. Varna Railway Company*, L. R. 7 Ch. 562.

There have been various statutory exceptions to this rule.

The Companies Clauses Act, 1845 (8 Vict. c. 16), s. 97, enacts as follows:—

“The power which may be granted to any such committee [*i.e.*, committee of directors] to make contracts, as well as the power of the directors to make contracts on behalf of the company, may lawfully be exercised as follows: (that is to say,)

“With respect to any contract which, if made between private persons, would by law be required to be in writing, and under seal, such committee or the directors may make such contract on behalf of the company in writing, and under the common seal of the company, and in the same manner may vary or discharge the same:

“With respect to any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, then such committee or the directors may make such contract on behalf of the company in writing, signed by such committee or any two of them, or any two of the directors, and in the same manner may vary or discharge the same:

Sect. 6.

"With respect to any contract which, if made between private persons would by law be valid, although made by parol only, and not reduced into writing, such committee or the directors may make such contract on behalf of the company by parol only, without writing, and in the same manner may vary or discharge the same."

Such contracts shall be binding upon the company and their successors. For companies incorporated under "The Companies Act, 1862," a similar provision exists. The Companies Act, 1867, s. 37.

Contracts with urban sanitary authorities, which by the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 21, are to be called urban district councils, are regulated by the Public Health Act, 1875, ss. 173 and 174, post.

Under the same Act the newly created parish councils are made corporate bodies but without a common seal. Provision is made to enable them to contract under the hands and seals, if required, of the chairman and two other members of the council. 56 & 57 Vict. c. 73, s. 3, sub-sect. 4.

Precedents.—For precedents of agreements see 1 Bythewood and Jarman, 436; 1 Pridaux's Precedents, 115; Key and Elphinstone, 65; Friend and Ware's Railway Precedents.

Costs.—Sections 81 and 82 provide that in case of persons not under disability, the costs connected with the conveyance, and the verifying of the title shall be paid by the promoters (see notes to these sections). As this does not include the costs of preliminary negotiation, provision for the payment of the costs should be made in the agreement. Pridaux thinks it is desirable to have an express clause dealing with all costs, as in some cases the statutory enactment may be excluded. 1 Pridaux, 117.

Thus, it is not unfrequent in these agreements that the question of price to be paid is referred to a surveyor. As this reference is a reference under the agreement and not under the Act, the Act will not apply to the costs. It has been decided that section 1 of the Lands Clauses Consolidation Act, 1869 (see post), which provides for the taxing of costs of arbitrations does not apply to references under these agreements. *Doulton v. Metropolitan Board of Works*, L. R. 5 Q. B. 333, followed in *Wombwell v. Corporation of Barnsley*, 36 L. T. (N.S.) 708.

See also *Callin v. Great Northern Railway Company*, 18 W. R. 21, cited above in this note.

"Ownen."—See definition, sections 3 and 7.

"Lands."—See definition, section 3 and notes. In this section the word may be given its widest signification, and it would appear that the company can purchase, if the landlord is willing, any stratum of land, or land exclusive of mines, or any grant of an easement. In *Great Western Railway Company v. Swindon and Cheltenham Railway Company*, L. R. 9 App. Cas. 787, at p. 801, Lord WATSON said: "I can see no reason for holding that in section 7 and other clauses of the Act which relate to purchase by agreement, the word 'lands' must be restricted to corporeal hereditaments. If a landowner is willing to sell a right of use, and such a right is sufficient for all purposes sanctioned by the special Act, I cannot conceive that it was the intention of the legislature to enact that the landowner should not sell or the company purchase, that limited right."

Sect. 6. *Mines.*—An agreement for the sale of lands will include all above and below the surface, and transfer the mines unless expressly excepted. In the case of railways and waterworks, however, by the word “lands” the mines do not pass unless expressly mentioned. See *Railway Clauses Act, 1845* (8 Vict. c. 20), s. 77, and the *Waterworks Clauses Act, 1847*, ss. 18—27, and *Errington v. Metropolitan District Railway*, 19 Ch. D. 559, 568. Private Acts sometimes contain a similar proviso.

“By the special Act authorised to be taken.”—Two conditions are necessary to make an agreement for sale valid under this section.

1. The land must be authorised to be taken by the special Act.

2. And it must be required for the purposes of such Act.

The cases as to both these conditions are collected in the notes to section 18, *post*.

Sections 12—15 deal with the purchase of land for extraordinary purposes.

“A consideration in money.”—This may be either a gross sum or an annual rentcharge. See section 10, and 23 & 24 Vict. c. 106, ss. 1, 2. As to the rights of unpaid vendors, see section 84 of this Act. As to interest, see below on construction of agreements.

“And of all estates and interests.”—As undertakers of works require usually the absolute ownership of the land, it is necessary for them to acquire the fee simple. If the fee has been cut up into numerous lesser estates and interests, it will be necessary to purchase or acquire all these estates.

“Construction of Agreements.”—These agreements must, of course, be construed in the ordinary way and be subject to the general law governing agreements and conveyances of real property. Thus, in a county with a local land registry, it is usual to register these conveyances, and this appears the proper course. See 2 Dart’s “Vendors and Purchasers,” 770.

The following are cases arising more particularly out of the *Lands Clauses Consolidation Acts* :

Time for Completion.—If a company contract for the purchase of land, the contract entered into by them must be performed and completed within a reasonable time in the same way as contracts entered into by other persons, and they are not entitled to insist that they may complete, whenever they want the land, provided the contract is completed within the time limited for exercising their compulsory powers. *Baker v. Metropolitan Railway Company*, 31 Beav. 504.

If, however, a landowner sell certain land to a railway company and agree that if the company should “require any additional land of the vendor, adjoining or near the land sold for the purposes of the railway and works, the same should be taken and paid for by the company” at a certain price; then the time within which this option may be exercised is not limited to the time during which the compulsory purchase might take place, but it may be exercised at any time before the period limited by the special Act for the completion of the works. *Rangeley v. Midland Railway Company*, L. R. 3 Ch. 306. See same point in *Kemp v. South Eastern Railway Company*, L. R. 7 Ch. 364.

Specific Performance.—Not unfrequently in agreements the price is left to be settled by a reference or arbitration. Until it is fixed, the relation of vendor and purchaser does not arise, and if it is at the option of the vendor to choose the form of reference, and he dies before having exercised the option, there is no contract which the court can enforce.

Morgan v. Milman, 3 De G. M. & G. 24.

But when the price is fixed and the contract complete the court will entertain a suit for specific performance. *The Regent's Canal Company v. Ware*, 23 Beav. 575.

In the case of leaseholds, the company will be held bound to accept an assignment with the usual covenants of indemnity. *Harding v. Metropolitan Railway Company*, L. R. 7 Ch. 154.

Where an owner of land contracted to sell land and a dispute arose as to his interest therein, and he claimed specific performance, the promoters could not in that action claim to be allowed to enter into possession on paying the price into court. They must proceed under the Act by the prescribed method. *Bygrave v. Metropolitan Board of Works*, L. R. 37 Ch. D. 147.

Where a vendor allows the promoters to take possession of land under agreement, and makes provision for interest to be paid on the balance of the purchase money, and there is delay in completing, he is not entitled in an action for specific performance to have the balance paid into court. *Pryse v. Cambrian Railway Company*, L. R. 2 Ch. 444. See the same principle in *Boddington v. Great Western Railway Company*, 13 Jur. 144.

The court will not, in an action by the landowner against the promoters, decree specific performance until the title has been investigated, but will refer it to chambers for that purpose. *Gunston v. East Gloucestershire Railway Company*, 18 L. T. (N.S.) 8.

Usually contracts for specific performance will not be granted against a company to execute works; but if a landowner has withdrawn his opposition and sold land in consideration of a railway doing certain works, specific performance will be granted. *Lytton v. Great Northern Railway Company*, 2 K. & J. 394. See *Webb v. Direct London and Portsmouth Railway Company*, 3 De. G. M. & G. 521; *Eastern Counties Railway Company v. Hawkes*, 24 L. J. Ch. 601. On the principles upon which the courts act in granting specific performance of contracts under statutory powers, see *Inge v. Birmingham and South-Western Railway Company*, 35 D. M. & G. 658; *Haynes v. Haynes*, 1 D. & S. 426.

If the legislature prescribes formalities to be observed by parties contracting *inter se*, and one endeavours to avail himself of the want of such forms to postpone or avoid the completion of a contract entered into, the court will itself ascertain whether the intentions of the legislature have in substance been complied with, and if they have, will carry the contract into effect, or by *mandamus* compel the observance of the formalities. *Baker v. Metropolitan Railway Company*, 32 L. J. Ch. 7, and see section 9.

If the landowner can be compensated by damages, specific performance will not be awarded. *Ingram v. Midland Railway Company*, 3 L. T. (N.S.) 533. Nor if the contract is too vague. *Tillett v. Charing Cross Company*, 28 L. J. Ch. 863.

In a suit for specific performance of an agreement by a railway company to purchase land from trustees, the persons beneficially entitled

Sect. 6. are not necessary parties. *Potts v. Thames Haven Dock and Railway Company*, 15 Jur. 1004.

See further as to rights of unpaid vendor, section 85, *post*.

Interest.—It is advisable for the vendor to stipulate in his agreement that interest shall be payable after the date fixed for completion.

If the price is to be fixed by a third party, the interest will not be payable till the price is ascertained, and the outgoings must be paid by the vendor until that date. *Catling v. Great Northern Railway Company*, 18 W. R. 121.

But if the company take possession before the price is fixed, then interest at 4 per cent. is payable from the date they take possession as in the case of any other purchaser. *Rhys v. Dare Valley Railway Company*, L. R. 19 Eq. 93; and see general principle in *Birch v. Joy*, 3 H. L. C. 565.

On the other hand, if they do not take possession after the price is fixed, they are liable to pay interest at 4 per cent. from the time when they might have taken possession or entered into the receipt of rents on a good title being shown. *Re Piggott and the Great Western Railway Company*, L. R. 18 Ch. D. 146; *In re Eccleshill Local Board*, 13 Ch. D. 365, disapproved of; and see *Spencer Bell and London and South-Western Railway Company*, 33 W. R. 771.

Where a sum of money is paid into court under the award of an arbitrator, and on appeal a larger sum is awarded, interest at 4 per cent. from the date of the first payment to the date of the second is payable on the difference. *In re Shaw and the Corporation of Birmingham*, L. R. 27 Ch. D. 614; *Re Navan and Kingscourt Railway Company*, L. R. 10 Eq. 113.

A purchaser who before completion of the purchase exercises acts of ownership over the land agreed to be purchased, must pay interest on the purchase money pending delay in the completion of the contract, although the delay is caused by the vendor and the land is untenanted, so that he receives no rents and profits from it. *Ballard v. Shutt*, L. R. 15 Ch. D. 192. And see *Blount v. Great Southern and Western Railway Company*, 2 Ir. Ch. R. 40.

But if the purchase money has been lying idle, and after notice to vendor completion is delayed by his default, he will not be allowed interest. *Regent's Canal Company v. Ware*, 23 Beav. 575.

An owner sold to a railway company a house where he carried on the business of a licensed victualler, and the purchase money was to be paid at a fixed date or earlier, as the company should choose, possession to be given on payment, they paying interest at 5 per cent. in the meantime, and the vendor was to remain as tenant to the agreed date at a rent, if possession was not taken. On the agreed date the money was not paid, and the owner was decreed specific performance and interest from the agreed date, and the company was held not entitled to any allowance by way of occupation rent, on the ground that the company had not shown that he had acquired benefit from the occupation. *Leggott v. Metropolitan Railway Company*, L. R. 5 Ch. 716.

If the occupation has been beneficial, a fair rent will be allowed. *Metropolitan Railway Company v. Defries*, 2 Q. B. D. 387.

If the company agree to pay the price and interest from date of delivery of abstract to date of completion, but before completion pay the money into court under section 69, the interest will cease to run from the date when the money is paid into court. *Lewes v. South Wales Railway Company*, 22 L. J. Ch. 209.

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But in a case where a similar agreement was made and the money, at the suggestion of the vendor's solicitor, was paid into court pending investigation of title, but the solicitor reminded the company that the 5 per cent. would still be payable. As the company did not express objection, and the money remained uninvested, the company was held to have acquiesced, and was ordered to pay interest up to the date of investment. *Ex parte Earl of Hardwicke*, 1 D. M. & G. 297.

Where the money was by agreement paid into a bank pending the Master's approval thereafter to be paid into court, and the company did not apply to have it paid into court until long after such approval, the company were held liable to pay interest at 5 per cent. from date of contract until motion to pay into court. *Chambers v. White*, 14 Jur. 1129.

Generally, when money is paid into court, the court has no jurisdiction to make any order as to interest on the purchase money. *Re Divers*, 1 Jur. (s.s.) 995.

Thus, where the Great Western Railway Company had paid the purchase money of settled property into the Bank of England, the vendors (the trustees) could not apply under the Act by petition to charge the company with interest during the time it had lain uninvested; but *quære*, whether an action would not have lain on the ground that it should have been paid direct to the trustees. *Ex parte White*; *Re Great Western Railway Company*, 9 L. J. (N.S.) Exch. in Eq. 9.

Interest can be demanded only in virtue of a contract, express or implied, or by virtue of the principal sum of money having been wrongfully withheld and not paid on the day when it ought to have been paid. Therefore, if a debtor is willing to pay, but the creditor leaves the claim for years unascertained and unexamined, interest will not run until the debt has been established and the precise amount ascertained. *Caledonian Railway Company v. Carmichael*, L. R. 2 H. L. (Sc.) 56.

A stipulation that if the purchase money is not paid by a certain day that an increased rate of interest shall be paid, is valid, and will not be regarded as a penalty, but as a separate contract. *Herbert v. Salisbury and Yeovil Railway Company*, L. R. 2 Eq. 221; *Pryse v. Cambrian Railway Company*, L. R. 2 Ch. 444.

But a contract to purchase land for 4,000*l.*, of which 2,000*l.* was to be paid at once and the remaining 2,000*l.* on a future day named in the agreement, and that if not paid by that day the vendors might repossess the land of their former estate, without any obligation to repay any part of the purchase money, was held to be in the nature of a penalty, and the company was held entitled to be relieved on payment of the balance of the purchase money with interest. Such an agreement might also be void as *ultra vires*. *In re Dagenham Dock Company*, L. R. 8 Ch. 1022.

See further as to interest when company enter, section 85.

7. It shall be lawful for all parties, being seised, possessed Parties of, or entitled to any such lands, or any estate or interest under disability enabled to sell and convey therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, pos-

Sect. 7 sessed, or entitled as aforesaid so to sell, convey, or release; (that is to say,) all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively could have exercised the same power under the authority of this or the special Act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their *cestuique* trusts, whether infants, issue unborn, lunatics, *femes covert*, or other persons, and that to the same extent as such *cestuique* trusts respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability.

"All Parties."—The previous section entitled undertakers to agree with the owners for the purchase of land; this section completes the power by enabling owners to sell and convey the land to the promoters. As regards absolute owners this power was scarcely necessary to be granted, so the section is mainly devoted to conferring a power of conveyance upon persons who, but for the enactment, would be unable to convey. Section 8 deals with their power to dispose of copyholds, and the mode of determining the purchase money for land purchased from

such persons is provided for by section 9. Section 69 provides for the purchase money, if over 200*l.*, being paid into the bank. Sections 6 and 7 extend only to lands authorised to be taken and required for the purposes of the Act. Section 12 deals with lands purchased for extraordinary purposes, and sections 14 and 15 place a limit on the powers of incapacitated persons in regard to such lands.

Section 3 of the Railway Construction Facilities Act, 1864 (27 & 28 Vict. c. 121), enables persons under disability to enter into provisional contracts with promoters of a railway before incorporation, but does not allow them to convey until after the certificate of incorporation is granted.

"Sell and Convey."—For forms of conveyance see section 81, but these are not commonly used as they are open to objection, see *Frend and Ware's Ry. Prec.*, p. 122.

The law as to the parties who must join in conveyance is not affected by this section.

"Corporations."—Section 108 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), provides that "the council shall not, unless authorised by Act of Parliament, sell, mortgage, or alienate any corporate land without the approval of the Treasury." This section of the Lands Clauses Consolidation Act enables them to sell land authorised to be purchased by the Act and required for the undertaking without such consent, but they cannot sell land required by the promoters for extraordinary purposes except with consent of the Treasury. See section 15, *post*, p. 30. A ward of the city of London is not within the Municipal Corporations Act. *Finnis and Young to Forbes and Pochin*, 24 Ch. D. 587.

Although public companies may have no power to sell land under their special Act, yet another public body may be authorised to take their land and the purchase money would be payable to them as persons absolutely entitled. *Re the Chelsea Waterworks Company*, 56 L. T. 421.

But such power must be expressly given to the second public company, as it will not be implied although shown on the deposited plan, and a general power given to make a railway and purchase land according to the deposited plans. *R. v. South Wales Railway Company*, 14 Q. B. 902.

Corporations Sole.—A rector or vicar possessing the freehold of a *disused* burial ground, cannot sell it unless it is desecularised by statute. *Reg. v. Twiss*, L. R. 4 Q. B. 407. A sale by agreement of such a burial ground, although authorised apparently, requires the sanction of an ecclesiastical court, at least if any monuments or dead bodies are to be removed. *Vicar of St. Botolph's, Without Aldgate, v. Parishioners of Same* (1892), Prob. 161.

"Tenant in Tail."—A tenant in tail can in the ordinary course convey without this power under the Fines and Recoveries Abolition Act (2 & 4 Will. c. 74), by a deed to be enrolled within six months in the Chancery Division of the High Court of Justice, and he may also sell under the powers of a tenant for life under the Settled Land Acts, 1882—1890, without having the deed enrolled, or he may sell under this Act, in which case the price will be determined under section 9 and be paid into court under section 69, but the deed need not be enrolled.

Tenants in tail who are restrained from alienation by statute have power to sell and convey under this statute and to bar heirs in tail and remaindermen except the Crown, which can only be bound by Act of Parliament when expressly named. If the reversion is in the Crown,

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Sect. 7. the consent of the Crown must be obtained. *In re Cuckfield Burial Board*, 24 L. J. Ch. 585.

"Tenant for Life."—He has also the powers of sale granted by the Settled Land Acts, 1882—1890.

When the legal estate is vested in trustees the equitable tenant for life, although he can enter into an agreement for sale, cannot convey, and the trustees are necessary parties to the conveyance. *Lippincott v. Smyth*, 29 L. J. Ch. 521.

A tenant for life under a will with a proviso against alienation, and a limitation over, in case of infraction, has apparently power of sale under this section, and the Court would order the purchase money to be laid out in other lands to be settled to like uses. *Deventish v. Brown*, 2 Jur. (N.S.) 1043. Now under the Settled Land Acts such a restraint would be inoperative. Where a tenant for life agreed that he should have 5l. per cent of the purchase money paid to him for his own benefit from date of agreement until the conveyance should be executed, it was held that it was not an improper advantage for him to take of his situation as tenant for life, the amount not being excessive. *In re Hungerford* and *In re The Rugby and Stamford Railway Company*, 1 Jur. (N.S.) 845; *Ex parte Hardwicke*, 1 D. M. & G. 297.

He is not, however, entitled to have the price of the unworked mines and minerals even although he is without impeachment for waste, and the bulk of the minerals could have been in all probability worked out during his life. *In re Robinson's Settlement Trusts* (1891), 3 Ch. 129.

See notes to section 69.

"Married Women."—The Married Woman's Property Act, 1882 (45 & 46 Vict. c. 75), has removed her disability in regard to her separate property if she married after 1st of January, 1883, and if married before as regards separate property received after that date in respect of which she can contract as a *feme sola*. But it does not affect settlements or property she is restrained from anticipating. As regards real estate, not separate property, she may dispose of it under the Fines and Recoveries Abolition Act (3 & 4 Will. 4, c. 74), as amended by the Conveyancing Act, 1882 (45 & 46 Vict. c. 39, s. 7), either alone or with her husband. The deed must be acknowledged before a Commissioner.

As regards property which she is restrained from anticipating, she would doubtless have power of sale under this Act should there be no trustees, but the point is not likely to arise as she can exercise in respect of such property the powers of the Settled Land Acts, 1882—1890 (45 & 46 Vict. c. 38, s. 61).

Under this Act, if merely entitled to dower, she has no power in respect of the fee; she can release her dower by deed acknowledged in the ordinary way, but under this Act no such acknowledgment is required.

In case of a woman married since 1834, a husband by conveying bars her right of dower, under the Dower Act, 1833 (3 & 4 Will. 4, c. 105), s. 4, and she is not, therefore, a necessary party to the conveyance.

If, however, her husband is dead, and her right to dower is accrued, it seems that she would be a necessary party. In such a case she is entitled when the land is taken to have the value of her right of dower paid to her out of the fund in court. *In re Hall's Estate*, L. R. 9 Eq. 718.

Where land is demised to a husband and wife and they convey to a railway company under section 7 by a deed not acknowledged, it was

held that this interest of the married woman was included under the clause "seised in her own right," and the conveyance was good. *Cooper v. Gwilling*, 4 Giff. 449. Sect. 7

A married woman who is absolutely entitled to an interest in property for her separate use is the proper party to sell, and not the trustee. *Peters v. Lewes and East Grinstead Railway Company*, L. R. 18 Ch. D. 429, 437. See note below "Trustees."

"Guardians."—Under the Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 59 and 60, an infant who is in his own right seised of or entitled in possession to land is to be deemed a tenant for life, and the powers of that Act as regards all infant tenants for life may be exercised by the trustees of the settlement if there are any, and if there are none then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, orders. Failing a testamentary guardian or one already appointed by the Court, it would appear advisable to proceed under the Settled Land Act, or under the Settled Estates Act, 1877, section 16, instead of under this Act. Guardians by nature, or nurture or *ad litem*, would appear not to be included in the powers given by this section of the Lands Clauses Act. See *Frend and Ware's Ry. Precedents*, p. 237.

"Lunatics and Idiots."—This Act only enables the committees of lunatics and idiots to sell, and does not authorize a person of unsound mind who has not been so found to do so. *In re Tugwell*, 27 Ch. D. 309.

Land belonging to persons of unsound mind can, however, be purchased under the Lunacy Act, 1890 (53 Vict. c. 5), as by sections 116 and 120 the judge has power to appoint some person to sell the land. Under the same Act the committees have power to sell the land with the consent of a judge in lunacy independently of this section of the Lands Clauses Consolidation Act. And even under this section it would appear necessary that the agreement should be inquired into by the Court to see that it is proper and beneficial, and the sanction of the judge obtained. *In re Gawan Taylor*, and *In re The York and North Midland Railway Company*, 1 McN. and G. 210, 211; and see *In re Wade*, 1 H. and Liv. 202; *Re Brown*, 1 McN. & G. 201.

When lands subject to a rentcharge in favour of a lunatic are taken by promoters, the Court will authorise the committee to release the lands from the rentcharge, the corporation purchasing in the name of the lunatic a Government annuity of the same yearly amount. *In re Brewer*, 1 Ch. D. 409.

"Parties entitled to a receipt of rents and profits."—A receiver appointed by the Court would require the consent of the Court. See *Trink v. Rundle*, 10 Beav. 318.

Mortgagor in Possession.—When a company desiring to take land deal only with the mortgagor, although they are aware of an equitable mortgage on the land, the equitable mortgagees are not bound by the proceedings even though they are aware of them, and the mortgagees are entitled in default of payment to have the land assigned to them by the company and the landowner. *Martin v. London, Chatham and Dover Railway Company*, L. R. 1 Eq. 145, and 1 Ch. 501.

As to dealings with lands in mortgage, see sections 108—114.

Sect. 7. “**Executors.**”—Where the owner of lands had agreed to sell to a railway company and died before completion having demised his real estate to an infant, the executors were held entitled to the purchase money and the infant was ordered to be a trustee under the Trustee Act, 1850, and on the payment by the company of the purchase money to the executors he or some proper person was ordered to execute a conveyance to the company. *In re Lowry's Will*, L. R. 15 Eq. 78.

Trustees.—Where a settlement gave trustees a power of sale during the life of a tenant for life with his consent in writing, and the promoters in the proceedings dealt with the tenant for life and not with the trustees, it was held that the conveyance must be made under this section by the tenant for life and not by the trustees under their power of sale. *In re Pigott and The Great Western Railway Company*, 18 Ch. D. 146.

And where trustees have a power of sale under the settlement, but profess to convey under this Act, the validity of the sale must be determined without reference to the power. *Peters v. Lewes and East Grinstead Railway Company*, 18 Ch. D. 429.

In the same case it was held that a bare trustee could not sell so as to bind his *cestuique* trust under this Act, and the same principle applied where a married woman was absolutely entitled (*ib.* 437).

But it would appear that when a married woman has the life estate for her separate use, with a general power of appointment, that the trustees ought to join in the conveyance. *Hall v. The London, Chatham and Dover Railway Company*, 14 L. T. (N.S.) 351; and see *Lippincott v. Smyth*, 29 L. J. Ch. 521.

Trustees of a charity—an ancient hospital—are capable of making a valid alienation of the charity land under this section. *St. Thomas's Hospital Governors v. The Charing Cross Railway Company*, 30 L. J. Ch. 395; and see *Grosvenor v. The Hampstead Junction Railway Company*, 26 L. J. Ch. 731.

Lessee.—Lessees can only sell on behalf of themselves and cannot bind persons entitled in reversion or remainder.

Where promoters pay the purchase money of leaseholds, and with the consent of the lessee take possession, they are bound to take an assignment, and bound to enter into an engagement to indemnify the vendor against the covenants in the lease. *Harding v. Metropolitan Railway Company*, L. R. 7 Ch. 154.

But the lessee is not liable for subsequent breaches of covenant, when this property is taken from him under compulsory powers by a railway company, as the covenant is discharged by the subsequent Act of Parliament. *Bailey v. De Crespigny*, L. R. 4 Q. B. 180, and next case.

The lessee, however, will be liable for damages in respect of breaches committed after the notice to treat, and before the assignment to the company, the measure of damages being the amount by which the lessor's reversion had become deteriorated at the date when the company took possession under the assignment. *Mills v. Guardians of East London Union*, L. R. 8 C. P. 79.

On the same principle where a lessee is bound by his lease not to alienate without licence of the lessor, the right of the lessor is taken away by operation of the Act, and the lessee is not bound to obtain it or to procure an apportionment of the rent between himself and the company. *Slipper v. Tottenham and Hampstead Junction Railway Company*, L. R. 4 Eq. 112, and see *Wadham v. Marlowe*, 8 East 314 n.

In an Irish case, it was held that where a company require the land only for a limited period, they cannot purchase such land from a lessee who is restrained from alienating, without dealing with the owner of the reversion also. *Legg v. Belfast and Ballymena Railway Company*, 1 Ir. C. L. 124, note. **Sect. 7.**

As to leases, see further sections 119—123.

8. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking. **Parties under disability to exercise other powers.**

See sections 95—107, as to dealings with copyhold lands.

Married women's copyholds are by general custom conveyed by surrender made by the husband and wife, she being examined by the steward as to her consent.

9. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this (a) or the special Act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury (b) or by arbitration, (c) or by the valuation of a surveyor (d) appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree, or if not then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, **Amount of compensation in case of parties under disability to be ascertained by valuation and paid into the bank.**

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- (a) Sections 6 and 7.
- (b) Sections 38—57.
- (c) Sections 23 and 25—37.
- (d) Sections 58—62.

“Injury to any such lands.”—This section is not confined to lands purchased by agreement, but extends to lands taken, and also to the permanent damage to lands held by persons under disability. The word “such” in the above clause does not refer to lands purchased or taken, but to lands belonging to persons under disability. Therefore, a tenant for life can agree under this section for a sum of money as compensation for lands injuriously affected, so as to bind those in remainder. *Stone v. Corporation of Yeovil*, 2 C. P. D. 99. That case was also under the Waterworks Clauses Act, and the injury caused was by a partial diversion of a stream where the corporation had power to take the whole stream, and it was held that the tenant for life of a mill might make a valid agreement under this section, for the payment of compensation for the full damage that would be occasioned when the whole stream was taken. See section 6 of Waterworks Clauses Act, *post*.

“By the valuation of two . . . Surveyors.”—A contract to sell at a price to be fixed by two surveyors is not *per se* enforceable, but if the parties adopt that which is the ordinary practice, if the surveyors fix the price and then, the price being fixed, they approve of it as a proper valuation, and the parties sell for not less than that price, the section is complied with. *Peters v. East Grinstead Railway Company*, 18 Ch. D. 429, 437.

If trustees are selling, they cannot nominate one of themselves who happens to be a surveyor to value on their behalf, and it would appear that in no case can a vendor nominate himself, and certainly not if he would thereby bind other persons (as, *e.g.*, a tenant for life). *Ib.*, pp. 438, 440.

“A declaration in writing.”—The provisions of this section must be strictly followed, and it is not enough if the section have been complied with in substance. A declaration in writing cannot be dispensed with, being a document of title showing that the price has been properly ascertained and that all formalities have been duly complied with, and in its absence a claim by the company for specific performance of the agreement will not be enforced. *Bridgend Gas and Water Company v. Dunraven*, 31 Ch. D. 219.

The same point was decided, in *Wycombe Railway Company v. Dormington Hospital*, L. R. 1 Ch. 268, TURNER, L.J., considering that the surveyors should also be regularly nominated.

The case of *Baker v. Metropolitan Railway Company*, 31 Beav. 504, as regards this point, may be considered over-ruled (see note p. 511), on appeal before Lord WESTBURY. If the company refuse to appoint a valuer the proper remedy is by *mandamus* to compel them to do so, and not by

reference to chambers to enquire as to whether the Act has been substantially complied with, as was done in that case. **Sect. 9.**

In a case, however, where a rector petitioned the court to have invested a small sum of money paid into the bank by a railway company for a portion of the glebe, and the amount had been fixed by one surveyor nominated by and acting for both parties, WIGBAM, V.C., made the order prayed for, subject to the production of an affidavit from a surveyor to be appointed by the petitioner to satisfy the Court of its sufficiency, remarking that he thought the only object of the provision was to protect the future interests of parties under disability. *Ex parte The Rector of Adderley*, 10 L. T. 131.

"Two Justices."—See note to section 3.

"Compensation shall be deposited in the Bank."—Sections 60—80 deal with the purchase money, and compensation coming to parties having limited interests.

The bank in this country is the Bank of England, see section 3.

10. It shall be lawful for any person seised in fee of, or entitled to dispose of absolutely for his own benefit, any lands authorised to be purchased for the purposes of the special Act to sell and convey such lands or any part thereof unto the promoters of the undertaking in consideration of an annual rentcharge payable by the promoters of the undertaking, but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum.

Where vendor absolutely entitled, lands may be sold on chief rents.

"Any person."—The proviso that persons under disability cannot sell for an annual rentcharge is repealed by the Lands Clauses Act, 1860 (23 & 24 Vict. c. 106), ss. 1—3, *post*, and they can now do so and recover in the same manner as provided in section 11 of this Act, the amount to be settled as provided in section 9.

An agreement had been made between a railway company and a contractor to the effect that if any landowner was unwilling to sell to the company in consideration of a rentcharge, the contractor should purchase for money and re-sell to the company who should grant a rentcharge to the contractor. The contractor agreed with certain landowners for the purchase of the land, paid the purchase money, and received grants of rentcharges calculated on the amount, and the landlords conveyed direct to the company. These rentcharges granted to the contractor were held good, he being in fact the owner, but rentcharges granted to the contractor generally in respect of sums paid for the purposes of the company were held to be invalid as it did not appear whether such money was purchase money or other compensation. *In re Manchester and Milford Railway Company*, 15 L. J. Notes of Cases, 47.

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Payment
of rents to
be charged
on tolls.

11. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

"Shall be charged on the tolls."—The holder of a rentcharge created by a railway company under this and the preceding section has priority over the debenture holders. He has a charge on the land sold for his purchase money, and these sections, said *ROMILLY, M.R.*, do not take away that charge. But he has no charge on land not sold by him. He has a first charge on the net earnings of the undertaking after paying in the first place what is necessary to maintain and work the line. Such holders are entitled to be paid such rentcharges *pari passu*. *Eyton v. Denbigh, Ruthin, &c., Railway Company*, L. R. 7 Eq. 439.

In *Earl of Jersey v. Briton Ferry Floating Dock Company*, L. R. 7 Eq. 409, *JAMES, V.C.*, held that there was no lien for the unpaid rentcharge on the land sold, as it was contrary to the intention of the parties that he should have a right to enter and destroy the public work if the rent fell into arrear. In this case, however, the conveyance had not been completed, and the lien claimed was for the arrears from the time the company took possession. The two cases do not appear to be reconcilable. See *post*, section 84, "Vendor's lien."

Where land is sold to promoters for a rent as distinguished from a gross sum, the rent *ipso facto* becomes a charge on the tolls. If the word "rent" is used in the conveyance and not "rentcharge," a power of distress is nevertheless incident to it under 4 Geo. 2, c. 28, s. 5, which makes it a rentcharge, and, therefore, section 10 and this section apply. The law is the same if the property sold is an easement. In *re Lord Gerard and Beecham's Contract* (1894), 3 Ch. 295.

"And shall be otherwise secured."—If lands are sold to a railway company in consideration of a rentcharge and the company agree that the vendor shall have power of re-entry if the rent is not paid, this is a valid agreement and not *ultra vires*, as the Act provides that the charge may be secured in such manner as shall be agreed upon, and the Court will allow the vendor to enter upon the lands and exclude the company until he is satisfied, even though a receiver may have been appointed. *Forster v. Manchester and Milford Railway Company*, 49 L. J. Ch. 454.

"To levy the same by distress."—The mere fact that a receiver has been appointed of the tolls, profits, and income of an undertaking in a suit

instituted by the owner of a rentcharge on behalf of himself and all other holders of similar rentcharges, will not prevent a person who holds such a rentcharge from getting the leave of the Court to distrain. *Eyton v. Denbigh, Ruthin, &c., Railway Company; Ex parte Price*, L. R. 6 Eq. 14. Sect. 11.

In the same suit liberty was granted to another holder to distrain, but where the company had by deed conveyed their superfluous lands and chattels to trustees upon trust for the benefit of creditors of the company, and a suit was instituted by a creditor on behalf of himself and all other creditors entitled to the benefit of the trust deed for an administration of the trusts thereof, and a receiver appointed in that suit also, the Court refused leave to the holder of a rentcharge to distrain the goods which had been conveyed to trustees. *Eyton v. Denbigh, &c., Railway Company; Rickman v. Johns*, L. R. 6 Eq. 488.

In this case also the Court refused to allow the party distraining to take the locomotives that happened to pass over his land for the purpose of working the line (p. 491).

Rails and sleepers forming railways, if fixed into the ground, become fixtures and cannot be distrained. *Turner v. Cameron*, L. R. 5 Q. B. 306.

12. In case the promoters of the undertaking shall be empowered by the special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would be enabled to sell and convey lands, to sell and convey the lands so authorised to be purchased for extraordinary purposes. Power to purchase lands required for additional accommodation.

"Extraordinary Purposes."—Certain local Acts, while providing that the land required for the undertaking may be compulsorily taken, allow the undertakers also to purchase land by agreement for other purposes connected with the undertaking. In the case of railways, such extraordinary purposes are defined by section 45 of the Railways Clauses Act, 1845 (8 Vict. c. 20), as follows:—

"For the purpose of making and providing additional stations, yards, wharves, and places for the accommodation of passengers, and for receiving, depositing, and loading or unloading goods or cattle to be conveyed upon the railway, and for the erection of weighing machines, toll-houses, offices, warehouses, and other buildings and conveniences ;

"For the purpose of making convenient roads or ways to the railway, or any other purpose which may be convenient for the formation or use of the railway." See *post*.

Referring to this and the next section of the Lands Clauses Act, Lord BRAMWELL said : "That they seemed to be intended to enable the promoters to acquire land which at the time of the passing of the special Act was not supposed to be required for the undertaking." *Hooper v. Bourne*, 3 Q. B. D., pp. 258, 272.

13. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, Authority to sell and re-purchase such lands.

Sect. 13. and for such considerations, and to such persons, as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time ; but the total quantity of land to be held at any one time by the promoters of the undertaking, for the purposes aforesaid, shall not exceed the prescribed quantity.

As to superfluous lands, see sections 127—132. But the lands acquired by voluntary agreement for extraordinary purposes are not superfluous lands and do not, if not used or disposed of, vest in the adjoining owners. The company is left free to deal with lands which they can only acquire by private treaty as any ordinary proprietor may do. *City of Glasgow Union Railway Company v. Caledonian Railway Company*, L. R. 2 Sc. Ap. 160.

Restraint
on purchase from
incapacitated
persons,

14. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special Act ; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the lands so sold or disposed of by them.

See section 7 as to persons under disability.

Municipal
corporations not
to sell without
the approbation
of the Treasury.

15. Nothing in this Act or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the [*Commissioners of Her Majesty's*](a) Treasury [*of the United Kingdom of Great Britain and Ireland, or any three of them,*](a) any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily.

(a) Repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 86).

See sections 7, 13, and 14, *supra*, and also section 108 of the Municipal Corporations Act, 1882. **Sect. 15.**

The consent of the Lords Commissioners of the Treasury to the alienation of the property of a corporation is sufficiently signified by a letter signed by their secretary. Such consent authorises the alienation of the corporate property as specified in the memorial on which it is founded. *Arnold v. Mayor of Gravesend*, 25 L. J. Ch. 776.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows : (a)

16. Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors, and administrators for the payment of the several sums by them respectively subscribed, before it shall be lawful to put in force any of the powers of this or the special Act, or any Act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking.

Capital to be subscribed before compulsory powers of purchase put in force.

(a) As to the effect of the headings see notes to section 5. This portion of the Act includes sections 16 to 68.

“**Shall be subscribed.**”—As to the evidence required to show that the amount has been subscribed, see section 17.

“**The compulsory taking of land.**”—This section is directed against compulsory taking of land only, and not against purchases by agreement. It is intended as a condition precedent to the exercise of compulsory powers, and is designed solely for the protection of those against whom the compulsory powers of the Act are to be exercised. A company has power therefore to purchase land by agreement before the whole capital has been subscribed, and such agreement will be enforced against the company. *Guest v. Poole and Bournemouth Railway Company*, L. R. 5 C. P. 553.

The notice to treat under section 18 is not necessarily an exercise of compulsory powers. It may be followed by an agreement by the landowner to sell the land at an agreed price, or at such price as a jury or arbitrator may assess as its value, or it may be a step towards exercising compulsory powers. In itself it is a neutral proceeding. If, therefore, a company give notice to treat before the capital has been subscribed, the landowner may assent to it, and compel the company by a *mandamus* to issue a warrant for the assessment of the compensation. *Guest v. Poole, &c., Railway Company*, *supra*, and see *In re Uzbridge and Rickmansworth Railway Company*, L. R. 43 Ch. D. 536, to same effect as to the nature of a notice to treat.

Sect. 16. As to the time within which compulsory powers may be exercised, see section 123.

If the capital is not subscribed all exercise of compulsory powers by companies is *ultra vires*, and on this ground the Court refused to order a railway company to complete its undertaking. *R. v. Ambergate, &c., Railway Company*, 1 E. & B. 372. Such an order would, however, not now be made even if the capital were subscribed, as it has been decided that the statutes empowering companies to carry out undertakings enable them, but do not compel them, to do so. *York and North Midland Railway Company v. Reg.*, 1 E. & B. 858; *Philip v. Edinburgh, Perth, and Dundee Railway Company*, 2 Macq. H. L. (Sc.) 514; *Scottish North Eastern Railway Company v. Stewart*, 3 Macq. H. L. (Sc.) 382.

Cases where section is inapplicable.—Where by a special Act a railway company were empowered to make an archway under and a bridge over the railway of another, and to have power to purchase the rights of using these in perpetuity, and they proceeded first by giving notice to treat and then, under section 85, by giving notice of their desire to enter upon and use the lands, and the railway company owning the land sought to restrain them on the ground that the capital had not been subscribed under this section, it was held, after much conflict of opinion, that they could not be restrained on that ground. Certain of the judges held that the special Act excluded the operation of this section, while Lord BRAMWELL was of opinion that the company could proceed under section 85, although section 16 had not been complied with. Lord WATSON, however, took an opposite view. *Great Western Railway Company v. Swindon, &c., Railway Company*, 9 App. Cas. 787.

Where an existing railway company is authorised to make a new branch line, and to raise funds for the purpose, this section does not apply, and the compulsory powers can be exercised before the new capital has been subscribed. *Weld v. South Western Railway Company*, 33 L. J. Ch. 142; *R. v. Great Western Railway Company*, 1 E. & B. 253.

In cases, where this Act is not incorporated or does not apply, the promoters are not bound to show either that they have a sufficient fund in hand to satisfy the price of the land they propose to take, or the means by which they propose to obtain such fund, and a landlord who sought upon these grounds to restrain Improvement Commissioners from proceeding under their Acts to take his land, was unsuccessful. *Salman v. Randall*, 3 My. & Cr. 439.

Eminent authorities have, however, expressed considerable doubt as to whether promoters can take compulsorily any part of the land authorised to be taken when it is clear that the undertaking cannot be completed. *Gray v. Liverpool and Bury Railway Company*, 9 Beav. 391; *Blakemore v. Glamorganshire Canal Navigation*, 1 My. & K. 154, at p. 164; *Cohen v. Wilkinson*, 1 McN. & G. 481; *Agar v. Regent's Canal Company*, 1 Swanst. 250 n.; *Mayor of King's Lynn v. Pemberton*, 1 Swanst. 244; *Salman v. Randall*, 3 My. & Cr. 439.

A certificate of two justices to be evidence that the capital

17. A certificate under the hands of two justices certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence thereof, and on the application of the promoters of the undertaking, and the

production of such evidence as such justices think proper **Sect. 17.**
and sufficient, such justices shall grant such certificate **has been**
accordingly. **subscribed.**

"Two justices"—See definition and notes, section 3.

"Shall be sufficient evidence."—This does not mean merely *prima facie* sufficient; in the absence of fraud the certificate is intended to be conclusive as regards the landowner, and proceedings to exercise compulsory powers will be valid, even although the certificate may have been granted by the magistrates on a mistaken interpretation of certain documents. *Ystalyfera Iron Company v. Neath and Brecon Railway Company*, L. R. 17 Eq. 143.

18. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorized to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works. **Notice of intention to take lands.**

"Lands"—See definition and notes to section 3.

Creating Easements.—In this section, unless there is provision in the special Act, the word "lands" has been held not to include incorporeal hereditaments, such as easements, in the sense that the undertakers cannot create, or cause landowners to grant to them, easements over their lands. Although a right of way may be sufficient for the purposes of the company, they must acquire the land *in solido*. *Pinchin v. London and Blackwall Railway Company*, 5 De G. M. & G. 851, 862, per Lord CRAWFORTH. This case was discussed in *Great Western Railway Company v. Swindon Railway Company*, 9 App. Cas. 787, and not overruled as regards this section.

It would be otherwise if the special Act authorised the company to acquire an easement only. *Hill v. Midland Railway Company*, 21 Ch. D. 143.

Sect. 18. Similarly, if not specially authorised, promoters cannot serve a notice to treat for a stratum of land, for the purpose, for example, of making a tunnel. They must acquire the whole land. *Sparrow v. Oxford Worcester, and Wolverhampton Railway Company*, 2 De G. M. & G. 94, 106; *Ramsden v. Manchester &c., Railway Company*, 1 Ex. 723; *Falkner v. Somerset and Dorset Railway Company*, 16 Eq. 458; *Re Metropolitan District Railway Company v. Cosh*, 13 Ch. D. 607 at 616.

Destruction of Easements.—Where the promoters by taking land or by the execution of their works interfere with or destroy an easement, the owner's remedy does not consist in calling upon the promoters to purchase the easement or to proceed under this section, but his claim for compensation arises under section 68 for injuriously affecting his land. *Duke of Bedford v. Dawson*, 20 Eq. 353, and see notes to section 68.

It does not matter whether the special Act gives power to acquire easements or not. The promoters should not, therefore, give notice to treat for easements which they may obstruct or destroy, but leave the owners to obtain compensation under section 68, or in the manner provided by the special Act. *Clark v. School Board of London*, 9 Ch. 190; *School Board for London v. Smith* (1895), W. N. 37, where ancient light and a right of way respectively were interfered with by schools built under the Elementary Education Act, 1870. *Wigram v. Fryer*, 36 Ch. 1 587, a similar case under a metropolitan improvement Act. *Swainston v. Finn*, 52 L. J. Ch. 235; *Badham v. Marris*, 52 L. J. Ch. 237, as respectively cases of support and of ancient lights under the Artisan Dwelling Acts. See also *Thicknesse v. The Lancaster Canal Company*, M. & W. 472, and see notes to section 68.

Similarly where a stream is entered upon and part only of the water taken, an owner of the stream below where it has been entered upon cannot compel the company to proceed under this section, but the remedy for the water diverted is under section 68. *Bush v. Trenchard Waterworks Company*, 19 Eq. 291; 10 Ch. 459; and see sections 6 and 12 of The Waterworks Clauses Act, 1847, *post*, and cases there cited. When the whole stream is diverted the promoters must give a notice to treat under this section. *Ferrand v. Corporation of Bradford*, 21 Beas 412.

As to the different interests in land, see, *infra*, note "To all the parties interested."

Under this section two conditions are required in order to enable promoters of an undertaking to take lands. These conditions are:—

1. The land must be required for the purpose of the undertaking.
2. The land so required must be authorised to be taken by the special Act.

The land must be required for the purpose of the undertaking.—The promoters of an undertaking, when they are authorised to take land for the purposes of that undertaking, are by the legislature constituted the sole judges as to whether they will or will not take the lands, provided only that they take them *bona fide* with the object of using them for the purpose authorised by the legislature, and not for any sinister or collateral purpose. The legislature leaves it to them to say to what extent they will use their statutable powers. *Stockton & Darlington Railway Company v. Brown*, 9 H. L. Ca. 246; *Webb v. Manchester and Leeds Railway Company*, 4 My. & Cr. 116.

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When, therefore, it is clear that the land is required for some purpose within the compulsory powers of a railway company, the court will not interfere to restrain them merely on the ground that they might obtain the same object in some other way without taking the land. *Lamb v. North London Railway Company*, L. R. 4 Ch. 522.

Where promoters are authorised to take or to purchase lands for a particular purpose, and they acquire land for that purpose, and the proper carrying on of their authorised work on such lands causes a nuisance, they cannot be restrained from carrying on their work on such land on the ground that they have power to purchase other land, and that the carrying on of the work on such other land would not cause a nuisance. It is not the duty of a company when they have an option to select land for the authorised purposes of their undertaking so to select it that its use for those purposes may not be detrimental, or as little detrimental as possible, to any adjoining owner. It does not matter whether it is land they are authorised to take compulsorily or additional land they are authorised to purchase. *London, Brighton, and South Coast Railway Company v. Truman*, 11 A. C. 45; *R. v. Pease*, 4 B. & Ad. 30.

In some cases special Acts have authorised public bodies to erect hospitals and district asylums, and to purchase lands for the purpose, but have specified no land nor imperatively directed that such buildings shall be erected. In such cases the public bodies can only exercise these powers, provided they can do so without creating a nuisance, and if they create such a nuisance they will be restrained. *Metropolitan Asylum District v. Hill*, 6 A. C. 193. In that case the nuisance was found as a fact. A hospital for infectious diseases is not in itself a nuisance within the meaning of the Public Health Act, 1875, and a local authority proposing to erect one will not be restrained on the ground that they are setting up a noxious business. *Withington Local Board v. Corporation of Manchester* (1893), 2 Ch. 19.

If a company bona fide acting under their statutory powers obtain a resulting benefit which it was not contemplated that they should get, they will nevertheless be entitled to the benefit and will not be restrained. *Stearns v. Metropolitan District Railway Company*, 29 Ch. D. 60.

Collateral Purpose.—If, however, the lands are not actually required for the purposes of the undertaking, or if they are required for collateral purposes, the promoters of undertakings will generally be restrained from exercising their compulsory powers. "The principle is this, that when persons embarking in great undertakings, for the accomplishment of which those engaged in them have received authority from the legislature to take compulsorily the land of others, making to the latter proper compensation, the persons so authorised cannot be allowed to exercise the powers conferred on them for any collateral object." Per Lord Cairns, in *Galloway v. Mayor of London*, L. R. 1 H. L. 34, 43.

Thus when companies have endeavoured by means of their compulsory powers to take land permanently for the purpose of obtaining materials for executing other parts of their works, as, for example, to construct an embankment, they have been restrained. *Bentinck v. Norfolk Estuary Company*, 26 L. J. Ch. 404; *Eversfield v. Mid-Sussex Railway Company*, 3 De G. & J. 286. As to railways taking lands temporarily for this and similar purposes, see Railway Clauses Consolidation Act, 1845, ss. 30—44.

Sect. 18. Nor will they be allowed to take land permanently for the purpose of depositing soil during the construction of the railway, but it would seem to be otherwise if they are likely afterwards to require the land for the construction of the railway. *Lund v. Midland Railway Company*, 34 L. J. Ch. 276, and note thereto.

Nor may they take land to construct a road different from the authorised by their Act when such road is for the accommodation of an adjoining landowner and not necessary for the purpose of constructing the railway. *Dodd v. Salisbury and Fovvil Railway Company*, 1 Giff. 15.

So, also, a waterworks company authorised to take a field or part thereof for the purposes of making a tunnel were restrained from taking part of the field for the purpose of sinking a well and erecting pumping machinery thereon. *Simpson v. South Staffordshire Waterworks Company*, 34 L. J. Ch. 380.

And a company will be restrained from exercising its compulsory powers in taking land if such land is taken in order to hand it over to fulfil a contract previously made with another landowner. *Vans v. Cockermouth, &c., Railway Company*, 13 W. R. 1015; *Lord Carrington v. Wombwell Railway Company*, 3 Ch. 377. In the case of a public body such an exercise of its powers may be valid on the ground that such was the intention of the legislature. *Rolls v. London School Board*, 1 Ch. D. 639, and cases cited, *infra*, in this note, "Meaning of the purpose of the undertaking."

Where a railway company takes land in excess of its powers it would appear that the court will not grant an injunction if the quantity and value of the land taken in excess are extremely small. *Dowling v. Pontyfrid, &c., Railway Company*, L. R. 18 Eq. 714.

Meaning of the Purposes of the Undertaking.—Various questions have arisen as to the construction to be put upon these words in the different classes of undertakings. The principle that land cannot be taken for collateral purposes is the same for all undertakings whether undertaken for profit or for the benefit of the public, but the latter case a much more liberal construction is placed upon the statute in construing its purposes. *North London Railway Company v. Metropolitan Board of Works*, 28 L. J. Ch. 909.

Where the promoters of a public undertaking have authority from Parliament to interfere with private property on certain terms, a person whose property is interfered with by virtue of that authority has a right to require that the promoters shall comply with the letter of the enactment, so far as it makes provision on his behalf. The Court cannot remodel arrangements sanctioned by Parliament, or relax conditions which the legislature has thought fit to impose. *Herron v. Rathmines and Rathgar Improvement Commissioners* [1892], A. C. 498; *Mayor of Liverpool v. Chorley Waterworks Company*, 2 De G. M. & G. 852.

Where the legislature confers powers on any body to take lands compulsorily for a particular purpose, it is on the ground that the using that land will be for the public good, and undertakers, whether seeking to make profit or acting solely for the public good, cannot enter into a valid contract binding them or their successors not to use those powers. *Ayr Harbour Trustees v. Oswald*, 8 App. Cas. 623; *Staffordshire Canal v. Birmingham Canal*, L. R. 1 H. L. 254; *Mulliner v. Midland Railway Company*, 11 Ch. D. 611.

When Undertaking is for Profit.—Companies formed for profit must prove clearly and distinctly from the Act of Parliament the existence of the power which they claim a right to exercise, and if there is a

doubt as to the extent of the power claimed by them, that doubt should be construed for the benefit of the landowner, and should not be solved in a manner to give the company any power that is not clearly and expressly given by statute. *Simpson v. South Staffordshire Waterworks Company*, 34 L. J. Ch. 381; *Webb v. Manchester and Leeds Railway Company*, 4 Mv. & Cr. 116, 120; *Gray v. Liverpool and Bury Railway Company*, 9 Beav. 391; *Lee v. Milner*, 2 Y. & Coll. 611.

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Similarly, where the words of a railway company's Act are capable of two interpretations, but the general intent of the legislature is complete indemnification to the party whose land is taken by the company, the Court will incline to that construction which will give effect to that intent. *Ex parte Eton College*, 20 L. J. Ch. 1.

The Court, however, will not assist persons to avail themselves of any omission in such powers for the purpose of giving effect to exorbitant claims against companies. *Bell v. Hull and Selby Railway Company*, 1 Rail. Cas. 616.

Thus, a waterworks company authorised to lay down pipes for the supply of a certain district, will be restrained from laying down pipes for the purpose of supplying water to any parish or place outside the place authorised, although the pipes proposed to be laid will be in part used for the district authorised. *Mayor of Cardiff v. Cardiff Waterworks*, 5 Jur. 353.

A railway company may take land for the purpose of making accommodation works, as they are part of the authorised undertaking. *Wiltshire v. Hull, &c., Railway and Dock Company*, 20 Ch. D. 323; *Lord Baschurch v. Great Western Railway Company*, 3 Ch. 745. For cases as to the meaning of "purposes of the undertaking," when the undertaking is a railway, see sections 6 and 16. Railways Clauses Act, 1845, and notes thereto, post.

Where Undertaking is for the Public Good.—Where public bodies are authorised to carry out a public work for the public advantage and without profit, the course has been to authorise them to take compulsorily not only the buildings actually necessary for forming the projected improvements, but also other neighbouring lands and buildings, the value of which and the proper mode of dealing with which the legislature considers to be connected with and dependent upon the projected improvements. These are enumerated either in a schedule to the Act or in a book of reference (see next note), and provision is made for the sale or letting of lands not actually required. The Courts have, therefore, construed their power to take lands very liberally, the purpose being to enable these public bodies to reimburse themselves by sale of the lands whose value has been increased by the improvements. The Courts have accordingly held that these public bodies are at liberty to purchase all the property mentioned in the schedule or book of reference, whether strictly required for the actual improvement or not. *Galloway v. Mayor and Commonalty of London*, L. R. 1 H. L. 34; *Quinton v. Corporation of Bristol*, L. R. 17 Eq. 524.

On that principle an agreement made prior to the Act to sell part of these lands not actually required for the improvement was held valid. *Galloway v. Mayor of London*, *supra*.

And a similar agreement to exchange land authorised to be taken for other land was held valid in the case of a school board, and they were not restrained from exercising their compulsory powers to acquire land to be exchanged, the land acquired in exchange being for the benefit of the school. *Boile v. London School Board*, 27 Ch. D. 639.

Sect. 18. In *Galloway's Case*, *supra*, the word "street" was construed to mean not only a road or way, but a thoroughfare with houses on both sides. The *prima facie* meaning of "street" is confined to the roadway and footways, and in a question between the London, Chatham, and Dover Railway and the city of London as to land which they were both authorised to take, it was held to have the latter meaning, the Act being construed strictly as regards the city. *London, Chatham, and Dover Railway Company v. Mayor, &c., of London*, 19 L. T. (N.S.) 250.

Evidence that Land required.—Where there is a reasonable appearance of probability that the land will be required, the evidence of the engineer of the company in the absence of fraud will be sufficient, and the Court should be saved from a deluge of affidavits. *Stockton and Darlington Railway Company v. Brown*, 9 H. L. Cas. 246; *Kemp v. South Eastern Railway Company*, L. R. 7 Ch. 364.

The burden of proving that the land is not *bona fide* required lies upon the party opposing the taking. Absence of *bona fides* can be shown by proving that the land is wanted for some collateral purpose, or that the alleged purpose is absurd. *Errington v. Metropolitan District Railway Company*, L. R. 19 Ch. 559.

Where the affidavit of the engineer merely stated that the land was or would be required, and did not state for what purpose, and the other side alleged that it could not possibly be required owing to its peculiar shape and position, the Court held that it had the right to inquire into the *bona fides*, and the company having declined to give evidence as to the purpose for which they wanted the land, an injunction to restrain them from taking it was granted. *Flower v. London, Brighton, and South Coast Railway Company*, 34 L. J. Ch. 540.

II. The Promoters must be authorised to take the Land.—By the Standing Orders of Parliament in the cases of local bills where lands are intended to be taken, plans, together with a book of reference thereto, are required to be deposited at the office of the clerk of the peace for any county, division, or riding where the lands are situate, and copies of the same are required to be deposited at the private bill office, and in the office of the clerk of the Parliaments.

The local Acts usually authorise the taking of land with reference to these plans and books of reference. The clause is usually somewhat of this form:—"Subject to the provisions and for the purposes of this Act, the promoters of the undertaking may enter upon, take, and use the lands delineated and described in the deposited plans and books of reference, or any of them."

These plans and books, however, are to be regarded only to the extent that the Act refers to them, and for the purpose for which it refers to them, and what is represented upon the plan is only to be looked at in so far as its representation is incorporated in and made part of the Act. *North British Railway Company v. Tod*, 12 Cl. & F. 722.

Thus, an Act which incorporated a plan enabling a railway to make bridges over roads of the heights and spans shown on the plan, was held not to require them to make the inclinations of the deviated roads at the rates of inclinations shown on the plans. *R. v. Caledonian Railway*, 16 Q. B. 19; *A. G. v. Great Eastern Railway Company*, 7 Ch. 475; *Breynton v. London and North Western Railway Company*, 10 Beav. 238; *Beardmer v. London and North Western Railway Company*, 1 McN. & G. 112; *Ware v. Regent's Canal Company*, 3 De G. & J. 212.

Similarly, delineations or notes on a plan as to proposed works will not enable undertakers to carry out these unless power is taken to do so

in the special Act. *A. G. v. Great Northern Railway Company*, 4 Sect. 18. De G. & S. 75; *King v. Wycombe Railway Company*, L. R. 2 Q. B. 310.

On the same principle that the Act alone is to be regarded if the undertakers are authorised to take certain land by the Act, but the name of an owner of an interest in the land is omitted in the book of reference, they will, nevertheless, be entitled to take it. *Kemp v. West End of London and Crystal Palace Company*, 1 K. & J. 681.

So also where a corporation served the usual notice on a landlord before applying to Parliament to take his land, and the Act allowed them to take more of his land than was described in the notice, it was held that they were entitled to take the extra land although not described in the notice. *Corporation of Huddersfield v. Jacomb*, L. R. 10 Ch. 92.

In the case of railways, errors or omissions in plans and books of reference can when shown to have arisen from mistake be corrected by two justices. Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 30), s. 7.

"Take."—The words "appropriate and use" in a local Act, empowering a company to "appropriate and use the subsoil and under-surface" for the purposes of a tunnel, were held to be equivalent to taking. *Metro-politan Railway Company v. Fowler* [1893], A. C. 416, 426. The destruction of an easement is not a taking within the meaning of this section. See note "Lands," *supra*, p. 34.

"Lands Delineated."—Questions have arisen as to whether a piece of land is delineated when some, but not all, of its boundaries are shown on the plan. The answer would seem largely to depend on the facts and plans in each particular case. It is clear that the parts of such lands which fall within the limits of deviation are delineated so that they can be taken. *Finck v. London and South-Western Railway Company*, L. R. 44 Ch. D. 330; *Wrigley v. Lancashire and Yorkshire Railway Company*, 9 Jur. (N.S.) 710; *Dowling v. Pontypool, Caerleon, and Newport Railway Company*, L. R. 18 Eq. 714; *Protheroe v. Tottenham and Forest Gate Railway Company* [1891], 3 Ch. 278.

As to the limits of deviation, see Railways Clauses Act, 1845, ss. 11—15, and notes thereto.

If the close is a large one and a small part is within these limits, and lines are drawn indicating that it extends beyond the limits, but no line is drawn to indicate either the boundary of the close or the portion intended to be taken beyond the lines of deviation, the undertakers will not be allowed to take such portion, on the ground that it is not delineated. *Protheroe v. Tottenham, &c., Railway Company*, *supra*.

If, however, only part of two sides of a parcel of land is omitted, and the part of the land not thereby indicated is small, the whole parcel may be taken as lands delineated. *Dowling v. Pontypool, &c., Railway*, *supra*.

In the last case (p. 740), HALL, V.C., stated that he thought "delineated" meant "sketched, or represented, or so shown that the landowner would have notice that the land might be taken." FRY, L.J., however, in *Protheroe's Case*, *supra*, p. 290, said that HALL, V.C., had "put as wide an interpretation upon the word 'delineated' as it could possibly bear." It would appear from these cases that if a person entering on the land with the plan and book of reference would not

Sect. 18. come to the conclusion that the undertakers intended to take the particular piece of land, then such land is not delineated within the meaning of the Act. See also *Wrigley v. Lancashire and Yorkshire Railway Company*, 9 Giff. 352.

"They shall give notice."—As to service of the notice see sections 19 and 20.

The giving of the notice to treat to all persons interested is a condition precedent to promoters taking land otherwise than by agreement, except in the cases provided for in sections 84—88, and 121, and if they take land without giving such notices or proceeding according to these sections, they may have an action brought against them for ejectment (*Stretton v. Great Western and Brentford Railway Company*, 5 Ch. App. 751), or they may be restrained from remaining in possession and using the land until they have complied with the provisions of the Act (*Ranken v. The East and West India Docks and Birmingham Junction Railway Company*, 12 Beav. 298; *Martin v. London, Chatham, and Dover Railway Company*, 1 Ch. App. 501; *Perks v. Wycombe Railway Company*, 10 W. R. 789); and be made liable in damages for trespass (*Ramsden v. The Manchester, &c., Railway Company*, 1 Ex. Rep. 723), or to penalties (sections 89, 90).

Even when the promoters have entered upon the land and completed their works, if by doing so they have committed a trespass, they will be restrained from continuing in possession. *Goodson v. Richardson*, 9 Ch. App. 221, distinguishing *Deere v. Guest*, 1 M. & Cr. 516.

If, however, a company, acting *bond fide*, take possession of property by mistake, and it is merely a question of value between the company and the owner, the Court will not grant an injunction, regard being had also to the injury that may be done to the public by delay thus occasioned in completing the works. *Wood v. The Charing Cross Railway Company*, 33 Beav. 290, and see *Garrett v. Banstead Railway Company*, 13 W. R. 878; *Munro v. Wivenhoe Railway Company*, 13 W. R. 880.

Similarly, if a company having purchased land *bond fide*, and a claim is afterwards made by a person asserting an adverse title, and basing it on vague evidence, the court will not grant an injunction. *Webster v. The South Eastern Railway Company*, 1 Sim. (N.S.) 272.

An injunction was also refused in a case where the landowner had taken the law into his own hands, having pulled down some of the company's works. He was left to his remedies at law. *Lind v. Isle of Wight Ferry Company* (1862), 1 N. R. 13.

Provision is also made to enable promoters to purchase interests in lands on which they have entered, if, by mistake, they have omitted to purchase them. Sections 124—126.

Giving a Second Notice.—The giving of one notice does not exhaust the power given to a company to take land belonging to a proprietor, and a further notice may be given to take additional lands if described in the schedule and required for the undertaking. *Simpson v. The Lancaster and Carlisle Railway Company*, 15 Sim. 580; *Stamps v. The Birmingham, Wolverhampton, and Stour Valley Railway Company*, 7 Hare 251, and see *Williams v. South Wales Railway Company*, 3 De. G. & S. 354.

Similarly, if a railway company have taken the surface without the minerals, they are entitled to give a second notice to treat for the minerals, if the time for compulsory purchase has not expired. There

is no difference between taking horizontal and vertical strata. It is **Sect. 18.** enough if they are necessary for the support of the undertaking. *Errington v. Metropolitan District Railway Company*, 19 Ch. D. 559.

The Effect of the Notice to Treat.—*Landowner's Rights against Promoters.*—The service of a notice to treat confers upon the landowner the right to have the value of the land assessed in the manner provided by the statute (see section 21), and the amount paid to him. *Fotherby v. Metropolitan Railway Company*, L. R. 2 C. P. 188; *Rex v. Hungerford Market Company*, 4 B. & Ad. 327. It does not of itself establish the relation of vendor and purchaser between the promoters and the landowner, to such an extent as to enable the landowner to bring an action for specific performance. His remedy is to compel them to proceed by *mandamus* (see section 21, note "Compelling Promoters to Proceed"). Once the price has been fixed the relation of vendor and purchaser has been established, and an action of specific performance will lie, or if the land has been taken, an action may be brought for the price. See section 6, note "Specific Performance," *ante*, p. 17; and section 36, note "Enforcing the Award," and section 50.

The service of a notice to treat does not create a debt "due or accruing" under Order 45, r. 3 of the Rules of the Supreme Court, so as to render it liable to be attached by garnishee order. *Richardson v. Elmit*, 2 C. P. D. 9. Such money cannot be attached until the conveyance has been executed. *Howell v. Metropolitan Railway Company*, 19 Ch. D. 508.

When the promoters give notice that they propose to take certain land they are bound to have all that land assessed, and cannot summon a jury to assess part of it only. Where there is one entire notice to treat, all the proceedings subsequent to that must have relation to the whole thing comprised in that notice. *Stone v. The Commercial Railway Company*, 4 Myl. & Cr. 122; *Ecclesiastical Commissioners v. Commissioners of Sewers of the City of London*, 14 Ch. D. 305.

Similarly the owner of two adjoining properties when he receives a notice to treat in respect of one of them and part of the other, cannot treat the notice as severable or as two notices, and proceed *ex parte* to have the value of one of the properties assessed. *Thompson v. Forest Gate Railway*, 67 L. T. 416.

The warrant issued by the company, under section 39, to the sheriff to summon a jury must be consistent with the notice to treat, but the irregularity may be waived. *Ex parte Bailey*, Bail Ct. Cases, 66, and see note to section 39, *post*.

A prior agreement by a landowner to sell to the promoters may, perhaps, be waived by service of notice to treat, as such service is a putting into operation of compulsory powers, and in a case where it was followed by entry under section 85, *PAGE WOOD, V.C.*, held that such proceedings assumed that no such agreement existed, and specific performance thereof was refused. *Bedford and Cambridge Railway Company v. Stanley*, 2 J. & H. 746.

But in a case where the company had blundered as to their method of procedure, and had served a notice to treat which neither the company nor the landowner had treated as valid, the previous agreement was not considered to be waived. *Kemp v. South Eastern Railway Company*, 7 Ch. 364, 373.

The service of a notice to treat is not equivalent to requiring possession under section 121. A tenant who has merely received a notice to treat

Sect. 18. cannot have his property assessed under that section. *R. v. Stone*, L. R. 1 Q. B. 529, and see *R. v. Kennedy* [1893], 1 Q. B. 533, cited *infra*.

In a case where a railway company were required to give six months' notice of their intention to take any tenement to the person rated in respect of such tenement, the company were held bound on having given such a notice to proceed with the purchase of the premises within a reasonable time, and it was held that the plaintiffs were entitled to a *mandamus*, and to substantial damages by reason of the company having neglected to do so. The notice was not considered a sufficient notice under section 18, but to have the same effect. *Morgan v. Metropolitan Railway Company*, L. R. 4 C. P. 97.

When such a notice is required to be given, the period at which the notice is given is the period to which all questions relating to the right to compensation must be referred. It is the date with reference to which the tenant's interest is to be determined. *Tyson v. Mayor of London*, L. R. 7 C. P. 18.

But in a case where notice to treat had been given to a lessee who had a 30 years' lease determinable under certain conditions by a three months' notice, and after the notice to treat the lessor so determined the lease, and no further steps under the notice to treat were taken, but in 14 months after the railway company required and took possession under section 85, it was held that as no proceedings had been taken under the notice to treat, the fact that it had been given was immaterial, and that the value of the tenant's interest was to be determined from the date of requiring possession under section 85. *Reg. v. Kennedy* [1893], 1 Q. B. 533, explained in *Bexley Heath Railway Company v. North* [1894], 2 Q. B. 579.

An owner of certain dilapidated houses, while putting them in repair, was informed that a provisional order had been obtained enabling the corporation of the city to acquire them compulsorily, and that the order was about to be confirmed by Act of Parliament. He continued his repairs and refused to stop, and upon a case stated the Court were of opinion that he was entitled to the sum expended thereon, and that the judge's instruction to the jury that if they considered the owner's outlay as repairs not *bond fide*, but for the purpose of making an inflated claim for compensation they should disallow it, was wrong in law. *Higgins v. Mayor of Dublin*, 28 L. R. Ir. Q. B. 484.

Effect on Owner's Rights of dealing with the Land.—The effect of the notice is that the promoters are bound to take and the owner to give up the property. Thus an owner who after the service of the notice proposed to put the property up for sale by auction was restrained from so doing. *Metropolitan Railway Company v. Woodhouse*, 13 W. R. 516.

When a person becomes a purchaser of an interest in land after notice and after possession had been given, he is merely a purchaser of an interest in the purchase money. He cannot restrain the promoters from continuing in possession. *Carnochan v. Norwich and Spalding Railway Company*, 26 Beav. 169.

The owner's power of dealing being concluded when the notice to treat is served, a lease for years granted subsequently to that period by him to a former weekly tenant cannot be the subject of compensation. *In re Marylebone Improvement Act*, 12 Eq. 389.

A requisition under section 6 of the Schedule to the Dwellings Improvement Act, 1875 (now repealed and re-enacted by the Housing of the Working Classes Act, 1890), was held equivalent to a notice to

treat, and no compensation was allowed for a lease granted after such notice. *Wilkins v. Mayor of Birmingham*, 25 Ch. D. 78. Sect. 18.

Where the titles of the various parties are doubtful the court will endeavour to keep the interests in the same situation in which they stand until the rights of the parties are determined. *The South Western Railway Company v. Couard*, 5 R. C. 703.

Where a lease has been granted with power of resumption for the purpose of building, the reversioner cannot after the notice to treat give a notice to resume possession for the purpose of conveying it to the railway. *Johnson v. Edgware Railway Company*, 14 L. T. (N.S.) 45.

"To all the Parties Interested."—*Equitable Interests*.—It is the duty of undertakers to serve a notice upon mortgagees of the land as well as upon the landowner, whether the mortgagees are legal or equitable. *Martin v. London, Chatham, and Dover Railway Company*, 1 Ch. App. 501.

And where persons have a species of lien or equitable right over land, it is an interest in land, and they should receive notice. *Rogers v. The Kingston-on-Hull Dock Company*, 10 L. T. (N.S.) 463.

Where a lessee for a number of years agreed, partly in writing and partly verbally, to sublet certain premises at a certain rent and not to raise the rent or give notice to quit as long as the rent due was paid, and to let the sub-lessee remain in the premises to the end of the term, it was held that the sub-lessee was entitled to the whole lease and that the Statute of Frauds was no bar in equity to his claim, and that he was entitled to have the assessed value of the lease paid to him. *In re King's Leasehold Estates*, L. R. 16 Eq. 521, and see also *Sweetman v. Metropolitan Railway Company*, 1 H. & M. 543.

Similarly, if a person is in possession of land under a building agreement determinable if not completed by a certain date, and prior to that date the owner tells him to suspend building operations because of the probability of the land being wanted by a railway company, and after the date for completion the railway take possession under section 85, the person who had the building agreement will have an interest in the land because the landlord by directing him to suspend building operations has raised an equity against himself to prevent him ejecting, and the railway take, subject to that liability, and the occupier is entitled to have his interest assessed. *Birmingham and District Land Company v. London and North Western Railway Company*, 40 Ch. D. 268.

Where a company have bought a prior incumbrance under a power of sale contained in the mortgage deed, and have thus acquired the legal estate, the right of a subsequent mortgagee is not to recover payment of arrears against the company, but, apparently, his right is against the money in the hands of those who sold the legal estate. *Hill v. Great Northern Railway Company*, 5 De G. M. & G. 66.

Tenants' Interests.—It would seem that if after the notice to treat has been served a new tenant takes possession without notice that notices have been served, he will be entitled to a notice to treat. *Carter v. Great Eastern Railway Company*, 8 L. T. (N.S.) 197.

Where tenants have agreed to sell their interests, but have not given up possession when they receive notice to treat, and the new tenants afterwards take possession, these new tenants are entitled to have a notice to treat and to have their full interest assessed apart from the notice to

Sect. 18. the previous tenant. *Re Arbitration between Chilworth Gunpowder Company v. Manchester Ship Canal Company*, 8 "Times" L. R. 79.

Notices need not apparently be served upon tenants having no greater interest in land than for a year or from year to year. They receive notice to give up possession under section 121. It is also open to the promoters to purchase the reversion and determine these short tenancies by notice to quit without any compensation (*Syers v. Metropolitan Board of Works*, 36 L. T. (N.S.) 277, and see per JESSEL, M.R., p. 278), or the owner may serve the notice to quit for the purpose of transferring the possession to the promoters, and the tenant will also be without any right of compensation. *Ex parte Nadin*, 17 L. J. Ch. 421.

Where a railway company acquired from the lessor part of certain lands held as a clay field under a lease which provided that the proprietor should be "entitled to resume and except from the clay field any part of the lands at his pleasure," it was held that the company had no power to exercise this power of resumption so as to defeat the tenant's right to compensation. *Solway Junction Railway Company v. Jackson*, 1 Ct. Sess. Cas. (4th series), 831.

The above case was approved by the House of Lords where the principle was laid down that the compulsory taking by promoters under their statutory powers of part of a superior's estate, cannot be regarded in law or in fact as equivalent to an exercise of a power reserved by the superior himself. *Fleming v. Newport Railway Company*, 8 A. C. 265 (Sc.).

A landlord who has granted a lease with a proviso that he may resume any part of the land demised in case it should be required by him "for the purpose of building, planting, accommodation, or otherwise" is not entitled under such proviso to resume possession of land required by a railway company under their statutory powers, so as to defeat the tenant's right to compensation, the word "otherwise" in the proviso being construed *ejusdem generis*. *Johnson v. Edgware, &c., Railway Company*, 35 Beav. 480.

Easements.—See note *supra*, "Lands," p. 33.

Not an Interest in Land.—A right for directors to use a room at certain times for certain purposes and for a certain clerk to use a desk in an office does not in either case constitute a tenancy so as to give a right of compensation. *Municipal Freehold Land Company v. Metropolitan and District Railway*, 1 C. & E. 184.

The land under a public street may not be a matter for compensation if the special Act so provides, and a *cul-de-sac* will be for this purpose a public street if there is evidence of dedication. *Souch v. East London Railway Company*, 16 L. R. Eq. 108.

Under the following circumstances, the claimants were held to have no interest in land so as to entitle them to compensation under the Lands Clauses Acts. A railway company had taken lands under which pipes belonging to a water company were laid, and which were at the time used for supplying water. The railway constructed an embankment and the pipes ceased to be used. Later, the railway company made a tunnel through the embankment, and in doing so, broke up and removed the pipes. The water company's claim was considered to be one for chattels only. *New River Company v. Midland Railway Company*, 36 L. T. 538.

Provision is made in the Lands Clauses Act as to how various interests **Sect. 18.**
are to be dealt with, as follows:—

Sections 95—98.—Copyhold interests.

Sections 99—107.—Rights over commons.

Sections 108—114.—Rights of mortgagees.

Sections 115—118.—Various classes of rentcharges.

Sections 119—123.—Rights of lessees.

“Parties enabled by this Act to sell.”—As to these, see sections 7 and 8 and the notes thereto.

“Shall demand the particulars of their interests.”—Although the notice to treat must demand these particulars, the parties interested are not bound to supply them. See section 21 and notes.

If such particulars are delivered by the landowner they should state both the quality and quantity of his estate. See note to section 21.

“And every such notice shall state.”—No particular form of words is required, but it is usual to accompany the notice with a diagram or plan showing the scale of admeasurement. Such a scale, however, is unnecessary provided the notice accurately points out the quantity and position of the land proposed to be taken. *Sims v. Commercial Railway Company*, 1 Rail. Ca. 431.

A common form is that given in *Dowling v. Pontypool Railway Company*, L. R. 18 Eq. 714, at 745:—“The lands, of which the particulars are contained in the schedule hereto, with the appurtenances, and which said lands so required are for the better description thereof, delineated on the plan attached hereto or delivered therewith, and are thereon distinguished by a red colour.”

In that case the deposited plans and books of reference showed a small plot, No. 38, nearly surrounded by a large plot, No. 37. The schedule to the notice to treat mentioned No. 37, but not No. 38, and the accompanying plan omitted the boundary to 38 and the number, but the part coloured red included No. 38. This was held a sufficient notice to entitle the company to take No. 38.

A mistake on the face of a plan by which land intended to be taken is omitted, will prevent the company from entering on such land. *Kemp v. London, Brighton, and South Coast Railway*, 1 Rail. Cas. 495, 506.

In cases of railways and waterworks, where the promoters are not bound to purchase the minerals, the notice should state whether they are to be taken or not. Railways Clauses Act, 1845, ss. 77—85.

Where railways require to take land for temporary purposes, fuller information is required in the notice. See Railways Clauses Act, 1845, ss. 32 and 33.

See forms in Appendix I.

Execution and Stamp.—In the case of companies whose Acts incorporate the Companies Clauses Act, 1845, the notice may be executed under section 139 of that Act, which is as follows:—

“Every summons, notice, or other such document requiring authentication by the company, may be signed by two directors, or by the treasurer or the secretary of the company, and the same may be in writing or in print, or partly in writing and partly in print.”

Sect. 18. Otherwise the notice should be authenticated by the corporate seal or in the manner provided by the special Acts. See notes to section 6.

Where a railway company served a notice to treat, and persons in their employment obtained the vendor's signature to a printed form of agreement fixing the sum to be paid for the land, it was held that neither the notices to treat nor the agreement need be under seal, and specific performance was decreed against the company. *Smith v. The Dublin and Bray Railway Company*, 3 Ir. Ch. Rep. 225.

The notice to treat requires no stamp, and in a case where, after the jury had assessed the value, specific performance was decreed of the contract to take the property, the Court ordered the minutes to be drawn up without any stamp. *Rawlings v. Metropolitan Railway Company*, 37 L. J. Ch. 824.

How validity of notice affected.—I. *By Time.*—By section 123 of this Act (see *post*), it is provided that the limit of time during which the promoters of an undertaking may exercise their compulsory powers to take land, shall be the time prescribed in the special Act and if no time is prescribed, then within a period of three years. There is usually a further provision in the special Act as to the time within which the works must be completed.

A notice to treat must be given before the time for exercising the compulsory powers has expired. It may be given the day before these powers expire. If it is given within that time, it will remain valid, at least so far as mere delay can affect it, until the time for completing the undertaking has expired. *Richmond v. North London Railway Company*, 3 Ch. 679; *Kemp v. South Eastern Railway Company*, 7 Ch. 364, 372.

It will still remain valid until the end of the time for completion, although that time is extended by a new Act of Parliament. *Ystalyfera Iron Company v. Neath and Brecon Railway Company*, 17 Eq. 143.

If the time for compulsory purchase is extended the notice, of course, is valid if given before its expiration. *Bentley v. Rotherham and Kimberworth Local Board*, 4 Ch. D. 588.

If the promoters have within the time limited for acquiring land, given a notice to treat, but have not proceeded thereunder until after that time, they may nevertheless proceed to have the value of the land assessed, although the time has expired. A landowner likewise may obtain a *mandamus* to compel them to proceed. *Reg. v. Birmingham and Oxford Junction Railway Company*, 15 Q. B. 634, over-ruling *Brocklebank v. Whitehaven Junction Railway Company*, 5 Rail. Ca. 373; see 15 Q. B. 647.

Similarly if a notice to treat has been given before the expiration of the time for compulsory purchase, the company can proceed under section 85, and enter upon the land after that time. The ground of this decision being that the right to enter and use under that section was not one of the powers for the compulsory purchase of lands. *Salisbury v. Great Northern Railway Company*, 17 Q. B. 840.

And they may do so whether the works can or cannot be completed within the time limited for the completion of the works. *Tiverton and North Devon Railway Company v. Loosemore*, 9 App. Ca. 480.

In the last case the question was discussed as to whether proceedings could be taken upon a notice to treat, after the time for completion of the works had expired, and although no decision was necessary on the point, an expression of opinion was given that if a company delays

completing till it can no longer exercise the powers for the sake of **Sect. 18.** which it was entrusted with the power of compulsory purchase, the quasi contract caused by giving a notice to treat should, at least at the option of the landlord, be at an end, unless perhaps the delay can be explained. A landowner might, however, compel them after the expiration of the time limited for completion of the works to proceed to have the quasi contract completed, unless he had improperly delayed his application for a *mandamus* (pp. 489, 496, 497).

Where the notice to treat is given before the expiry of the period for exercising compulsory powers, and the owner gives a counter-notice after the expiry of such period, the company may proceed to have the value assessed of the whole property under the counter-notice. *Pinchin v. The London and Blackwall Railway Company*, 1 K. & J. 36; *Schwinge v. The London and Blackwall Railway Company*, 24 L. J. Ch. 405.

As to counter-notice, see this note, *infra*.

II. *By Revocation*.—When the promoters have given notice to take land, they cannot withdraw it without the concurrence of the landowner, or unless a counter-notice has been served upon them under section 92 (which, see *post*, and this note, *infra*). *Tawney v. Lynn and Ely Railway Company*, 16 L. J. Ch. 282; *R. v. Hungerford Market Company*, 4 B. & Ad. 327.

If they withdraw a notice and serve another requiring a less quantity of the land than that mentioned in the first notice, they will be restrained from proceeding under the second notice. *Tawney v. Lynn and Ely Railway Company*, 16 L. J. Ch. 282.

Similarly if they proceed under section 85, to enter and take possession of a portion only of the lands which they have given notice to take, they will be restrained by injunction. *Barker v. North Staffordshire Railway Company*, 2 De. G. & Sm. 55.

Where the company gave notice to the owner and entered into possession by agreement with the occupying tenant, without paying the purchase money or giving security under section 85, the company were restrained from proceeding with their works, and ordered to restore the land to its former condition, but opportunity was given them to satisfy section 85. *Armstrong v. Waterford and Limerick Railway Company*, 10 Ir. Rep. Eq. 60.

The same rule applies equally to trustees under an Act of Parliament carrying out a public purpose, and to companies formed for private gain. *Steele v. Corporation of Liverpool*, 7 B. & S. 261; *Birch v. Vestry of St. Marylebone*, 20 L. T. (N.S.) 697.

It does not however, apply to Commissioners appointed under a public Act to do certain things on behalf of the Crown, for the benefit of the public, and having a limited power of taking land, provided the required quantity can be obtained for a given sum. Such Commissioners have been held entitled to withdraw a notice to treat, where it was given to ascertain whether the land could be purchased for the given sum. *R. v. Commissioners of Woods and Forests*, 15 Q. B. 761. See this case discussed in the two last mentioned cases.

III. *By Counter Notice*.—When promoters give notice to take part of a property the owner may in the cases mentioned in section 92, give a counter-notice requiring them to take the whole. The company are not bound to take the whole; they may abandon their notice and refuse to take the part. *King v. Wycombe Railway Company*, 28 Beav. 104; *Reg. v.*

Sect. 18. *London and South Western Railway Company*, 12 Q. B. 775; *Reg. v. London and Greenwich Railway Company*, 3 Q. B. 166, and see note to section 92.

When the landowner has delivered a counter-notice its effect is to suspend the original notice until it is ascertained whether the company will take the whole property or not. Until the company signify their intention either to take the whole or abandon their original notice, the landowner may withdraw his counter-notice in which case the original notice remains in force. *Pinchin v. London and Blackwall Railway Company*, 1 K. & J. 36.

If the company abandon their notice to treat on receipt of a counter-notice, the subsequent withdrawal of the counter-notice will not revive the original notice. *Ex parte Quick*, 12 L. T. (N.S.) 580.

On receipt of the counter-notice there must be some step taken by the company which amounts to a signification of their intention to abandon or to take the whole. If they decide to take the whole, it is not necessary that they should deliver a second notice under section 18 to treat for the whole. The notice, counter-notice, and assent to take the whole are sufficient to constitute the *quasi* contract binding the company to take the whole. *Schwinge v. London and Blackwall Railway Company*, 24 L. J. Ch. 405.

Although on receipt of a counter-notice to take the whole, the company proceed under section 36 of the Railways Companies Act, 1867, to apply to the Board of Trade for the appointment of a surveyor to determine the value of the property comprised in the notice and counter-notice; this proceeding on their part is not such a signification of their intention as binds them to take the whole of the property and they are still at liberty to withdraw their notice to treat. *Grierson v. Cheshire Lines Committee*, 19 Eq. 83.

Where the counter-notice is invalid the company may disregard it, and proceed at once under their notice to treat, and they are not bound to wait till a valid counter-notice is served upon them. *Harrie v. South Devon Railway Company*, 32 L. T. (N.S.) 1; *Tiverton and North Devon Railway Company v. Loosemore*, 9 App. Cas. 480, and see S. C. 22 Ch. D. 25.

Where a company have served an invalid notice to treat and the landowner has given a valid counter-notice, and the company proceed with their works on the faith that the landowner is willing to sell the whole, the company will not be restrained from proceeding to take steps to purchase the whole. *Pinchin v. The London and Blackwall Railway Company*, 24 L. J. Ch. 417.

The acceptance by the solicitors of a company of a bad counter-notice under section 92 will not bind the company who may proceed to have the value assessed of the land mentioned in their original notice. *Treadwell v. London and South Western Railway Company*, 51 L. T. (N.S.) 894.

IV. Estoppel.—The conduct of either of the parties may prevent them from setting up the validity or invalidity of the notice to treat.

Thus, where a company entered upon a man's land and in an action of ejectment denied his title and stated that he was unable to identify his land, and that, therefore, they were unable to give any notice to treat, they were in a future proceeding in Chancery to restrain them from using the land, held to be estopped from setting up a right to enter under an

alleged notice to treat previously given. *Stretton v. Great Western Railway Company and Brentford Railway Company*, 5 Ch. 751. **Sect. 18.**

So in a case where a company had given notice to treat and having taken no proceedings for fourteen months gave the landowner notice of an intended application to abandon the undertaking, and some months after proceeded to obtain the lands compulsorily, they were restrained, on the ground that they led the landowner to believe that they had abandoned, and had induced him to forbear taking proceedings. *Hedges v. Metropolitan Railway Company*, 28 Beav. 109.

A landowner may be estopped from disputing the validity of a notice to treat if he is aware of the alleged invalidity and delays for some months to raise the question (*Lynch v. Commissioners of Sewers*, 32 Ch. D. 72), or if he has agreed to waive the notice. *Reg. v. South Holland Drainage Committee*, 8 Ad. & E. 429.

The promoters who should have given the notice cannot after the compensation has been assessed at their request, allege the want of notice. *Reg. v. Trustees of Swansea Harbour*, 8 Ad. & E. 439.

Where a railway company after the compulsory powers of their original Act have expired and after the railway has been opened for traffic obtain another Act enabling them to widen their line and for that purpose to take additional lands, they cannot proceed to take a piece of land for this purpose under a notice to treat given previously under their original Act and not then proceeded with, although the land may have been scheduled in both Acts. The object of the company was to obtain the land without paying for the interests created in the interval, but it was held that under the first Act they were only authorised to take land for the purposes of that Act and not for a purpose under a later Act. *Richmond v. North London Railway Company*, 3 Ch. 679.

The Compensation to be Made.—The methods for assessing compensation pursuant to this section are provided in sections 21—67. For the principles of compensation to be made for lands taken, and for the damage caused to lands held therewith by severance or other injurious affection, see sections 49 and 63 and the notes to section 63. For the principles of compensation in other cases, see notes to section 68.

19. All notices requiring to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, (a) shall also be left with the occupier of such lands, or if there be no such occupier, shall be affixed upon some conspicuous part of such lands. Service of notices on owners and occupiers of lands.

(a) See section 58 as to how compensation is to be determined in such cases.

Sect. 19. "Parties entitled to sell."—Persons under disability are enabled to sell under section 7, and the persons there mentioned would be the proper persons to be served under this section, but in cases where persons have been enabled to sell by reason of subsequent statutes, the promoters have a discretion. See notes to section 7.

Special Acts sometimes make provisions for service on particular persons, and the provisions must be strictly complied with; service on any other person would not be valid. *Earl of Harrington v. Metropolitan Railway Company*, 13 L. T. (N.S.) 658.

"Last usual place of abode."—In a case under a similar provision in the Summary Jurisdiction Act, 1848, it was stated that the word "last" means the then present place of abode if he has any, and the last which he had if he has ceased to have any. *Ex parte Rice Jones*, 19 L. J. M. C. 151.

"Absent from the United Kingdom."—If the owner cannot be found compensation is assessed and paid into the bank pursuant to sections 58—67. If the owner on his return is not satisfied he can have the amount assessed by an arbitrator (section 64).

"Left with the occupier."—If parties are insisting on their rights under this statute, the modes in which service can be effected are those contained in this section and no others. Service on an occupier of land will not do unless it turns out that the owner after diligent inquiry cannot be found, or is out of the United Kingdom. *Shepherd v. Corporation of Norwich*, 30 Ch. D. 553.

Where the notice deals with land in the several occupation of more than one tenant, the notice for the owner must be served on all the occupiers; service on the occupier of part of the land is not sufficient; the notice so served on the occupiers should show that it is for the owner. S. C.

It would appear also that service on an agent authorised to accept service could not be effected so as to bind the principal. S. C., p. 573.

A notice improperly served does not bind the landowner, and it would appear does not bind the promoters. S. C., p. 573.

And similarly a notice served on a landlord does not bind his tenant, and does not, therefore, as regards the tenant bind the promoters. *R. v. Great Northern Railway Company*, 2 Q. B. D. 151.

Service of notice on a corporation aggregate.

20. If any such party(a) be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

(a) *Party*.—This refers to the parties mentioned in section 19.

"Left with the occupier."—See note to section 19, *supra*.

21. If for twenty-one days after the service of such **Sect. 21.** notice, (a) any such party (b) shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree (c) as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party or which he is by this or the special Act enabled to sell, (d) or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

(a) That is, the notice mentioned in section 18.

(b) That is, the party interested in or entitled to sell, see section 18.

(c) With respect to the purchase of lands by agreement, see sections 6—15.

(d) See section 7.

"Twenty-one Days."—This period, it would appear, does not apply to a counter-notice under section 92, and the promoters would apparently not be bound to wait twenty-one days after assenting to take the whole property provided a fair opportunity was given to the landowner to agree as to a price. *Schwinge v. London and Blackwall Railway Company*, 1 Jur. (N.S.) 368.

"The particulars of his claim."—The notice to treat usually states that if the particulars are not delivered within twenty-one days that the promoters of the undertaking will proceed to have the amount assessed pursuant to this section. The section, however, does not make it compulsory on the landowner to supply these particulars. If he desires to proceed to arbitration under section 23 or section 68 he must deliver particulars similar to those required by this section (see these sections). In certain local Acts an owner is compelled to give particulars of his interest.

These particulars must be such as will enable the company to ascertain the true value of the lands, and so offer the party interested proper compensation. When the land is to be taken they should state both the quantity and quality of the owner's interest, and merely to describe it as a "leasehold" is not sufficient. *Healey v. Thames Valley Railway Company*, 5 B. & S. 769, 778. See 7 B. & S. 836.

In a case, however, where the plaintiff claimed as mortgagee in possession of certain houses, which were alleged to be injuriously affected, and both parties referred the matter to arbitration, and it was shown that the premises were let and that the plaintiff had only a reversionary interest, on an action on the award while it was held that these particulars were insufficient, it was also held that as the company, instead of regarding the claim as insufficient, proceeded to

Sect. 21. arbitration, that they must, therefore, be taken to have waived such objection. *Lowering v. City of London and Southwark Subway Company*, 7 Times Rep. 600.

Where, however, the claim was for damages for loss of business which had occurred during the construction of the works, it was held that a statement by a claimant that he was "occupier" and that he carried on his business of a baker on the premises was sufficient, as it enabled the company to determine the fairness and propriety of the claim. *Cameron v. Charing Cross Railway Company*, 16 C. B. (N.S.) 430, discussed in *Healey v. Thames Valley Railway Company*, *supra*.

In a case where a lessee had agreed not to raise the rent or give notice to quit to an under-tenant so long as he paid the rent due during the period of his own lease, particulars by the under-tenant of his interest described as "held for any term at tenant's option, but not beyond the term and interest of A., which term will expire in 1881," was regarded apparently as sufficient. *In re King's Leasehold Estates; Ex parte East of London Railway Company*, 16 Eq. 521. See *Falconer v. Aberdeen Railway Company*, 15 Sc. Sess. Ca. (2nd ser.) 352.

Where trustees in their notice stated that they had and claimed "an estate and interest in certain copyhold lands and hereditaments," the Court were of opinion that this description was not conformable to the statute. *Re Arbitration, North Staffordshire Railway Company v. Lauder*, 17 L. J. Ex. 350.

As to service of such particulars, see section 134.

"Or for any damage."—As to what damage is to be taken into account in assessing the value of land taken, see sections 49 and 63 and the notes to section 63. As to damage to land when no land is taken, see section 68 and notes.

"Shall be settled in manner hereinafter provided."—The methods provided by the Lands Clauses Acts for determining the amounts in cases of disputed compensation are four:—

I. *By justices*—

(a.) When the amount claimed does not exceed 50*l.* (sections 22 and 68).

(b.) When a person having no greater interest than as tenant for a year or from year to year is required to give up possession under section 121.

The procedure before justices is provided by sections 24 and 63.

II. *By arbitration*—

(a.) When the claimant desires arbitration (sections 21, 23, and 68), except in the cases where justices have jurisdiction, *supra*, and even in these cases if both parties consent to it.

(b.) In the case of an owner out of the United Kingdom under section 64.

(c.) In case of a dispute as to price when anyone exercises their right to pre-emption of superfluous lands under section 130,

The procedure in arbitrations is dealt with in sections 25—37, 63, and **Sect. 21.** in the Arbitration Act, 1889.

III. *By a jury*—

- (a) Excluding the cases when justices have jurisdiction, section 23 provides that the question shall be settled by the verdict of a jury when the claimant does not desire arbitration, or if the matter has been referred and the arbitrators or umpire shall for three months fail to make their award, or if no final award shall be made (*post*, p. 56).
- (b) Under section 68, where the amount exceeds 50*l.* and the claimant gives notice of his desire to have the amount settled by jury (*post*). See note to section 38, *post*, p. 83.

The procedure for settling questions by the verdict of a jury is dealt with in sections 38—57.

In the case of railways, when the question is under the Lands Clauses Act to be settled by the verdict of a jury, the company or claimant may apply to a judge of the High Court who may make an order to have the question tried by a jury in the superior court. 31 & 32 Vict. c. 119, s. 41 ; see *post*.

IV.—*By a surveyor appointed by justices*—

- (a) When a person is prevented from treating by reason of absence from the United Kingdom. Section 58.
- (b) Or when a person, after diligent inquiry, cannot be found. Section 58.
- (c) When a person does not appear at the time appointed for the inquiry before a jury. Sections 47, 58.
- (d) In case of common lands when no committee is appointed to deal with the promoters. Section 106.

The procedure for settling the compensation by surveyors is dealt with in sections 58—63.

When promoters are desirous of entering upon lands before the amount has been agreed or assessed, the amount to be deposited may be settled by a surveyor. Section 85.

Sections 94, 96, 105, 112, 114, 115, and 124, provide that compensation for the special interests therein respectively referred to shall, in case of dispute, be settled as in other cases of disputed compensation.

Compelling Promoters to Proceed.—*Mandamus.*—When the notice to treat has been given, and the promoters of the undertaking do not proceed to have the amount of compensation settled as provided, the proper mode of procedure is for the landowner to apply to the High Court for a *mandamus* to compel them. This may either be done by motion for a prerogative writ of *mandamus*, which can only be granted by the Queen's Bench Division (for procedure, see Crown Office Rules, 1886, rr. 60—80 in Appendix), or by an action of *mandamus* under Order 53 of the Rules of the Supreme Court (see Appendix), either in the Chancery or Queen's Bench Division. The prerogative writ, however,

Sect. 21. will not be granted if the Court are of opinion that an action of *mandamus* is as convenient a mode of proceeding as by the prerogative writ. *Reg. v. Lambourn Valley Railway Company*, 22 Q. B. D. 463.

The above case of *Reg. v. Lambourn Valley Railway Company* was explained in *Reg. v. London and North Western Railway Company* [1894], 2 Q. B. 512, at p. 518. It would unduly narrow the powers of the Court to say that it is an answer to any application for a prerogative writ of *mandamus* that a *mandamus* could have been granted for the same purpose in an action. A prerogative writ of *mandamus* ought to be granted for the purpose of speedy justice or other reasons, in which it would be uncertain whether it was possible to achieve the same results in any other way, and if it were possible would take much time and difficulty. Motion for a prerogative writ of *mandamus* would, therefore, as being the more expeditious remedy, appear to be the proper remedy under this section, as, according to the above case, it was held to be the proper remedy to compel promoters to take up an award under section 35.

The application for a prerogative writ of *mandamus* cannot be made by a party in person. Counsel must be instructed, and the same rule holds on appeal. It would appear doubtful whether the rule *nisi* can be obtained in person. *Reg. v. Mayor of Liverpool*, 7 Times Law Rep. 592.

No second application can be made for a prerogative writ after the first has been discharged. *Reg. v. Mayor of Bodmin* [1892], 2 Q. B. 21.

An action of *mandamus* will lie when the promoters have served their notice to treat, even although no pecuniary damage has been caused by the delay, and it may or may not be joined with a claim for damages. *Fotherby v. Metropolitan Railway Company*, L. R. 2 C. P. 188; *Guest v. Poole and Bournemouth Railway Company*, L. R. 5 C. P. 553; *Morgan v. Metropolitan Railway Company*, L. R. 4 C. P. 97.

Section 25, sub-section 8, of the Judicature Act, 1873, also enables the Courts to grant a *mandamus* by an interlocutory order in an action in cases that appear just and convenient, but it will not be granted to compel a company to proceed to assess compensation unless it is shown that real injury will be occasioned by the delay, and the matter will usually be postponed until the trial. *Widnes Alkali Company v. Sheffield and Midland Railway Company's Committee*, 37 L. T. 131.

The *mandamus* provided by 25th section of the Judicature Act, sub-sect. (8) is confined to cases where an action will lie, i.e., where a legal wrong has been done. It will not, therefore, be granted to compel a local board to perform a public duty. In such a case the prerogative writ would be the proper remedy. *Glossop v. Heston Local Board*, 12 Ch. D. 102, 116, 122, and see *Baxter v. London County Council*, 63 L. T. 767.

It is not a good answer to an action for *mandamus* that the capital has not been subscribed under section 16. *Guest v. Poole and Bournemouth Railway Company*, L. R. 5 C. P. 553, and see notes to section 16.

Before the court will issue a *mandamus* there must be something in the nature of a demand by the landowner and a refusal by the company. A neglect to issue a warrant after demand made upon the solicitors of the company is a sufficient refusal to entitle the claimants to a writ. *In re Senior*, 18 L. J. Q. B. 333.

22. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this Act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices.

Sect. 22.
Disputes as to compensation where the amount claimed does not exceed 50*l.* to be settled by two justices.

Agreement.—As to purchase of lands by agreement, see sections 6—15.

Parties.—As to parties, see section 7.

"Injurious Affected."—This section, apart from any proviso in the special Act, gives a right to compensation for the injurious affection of land by the execution of the works when no other land has been taken, and the amount does not exceed 50*l.* Section 68 gives it where the amount is above that sum. *Reg. v. St. Luke's*, L. R. 6 Q. B. 572, p. 575; L. R. 7 Q. B. 148, p. 152. When land is taken, compensation is given for the injurious affection of land held therewith by section 63.

"Shall not Exceed Fifty Pounds."—Justices have power under section 121 to settle claims for a higher amount when possession of land is taken from a tenant having no greater interest than for a year or from year to year. (See notes to that section.) Although this section gives powers to justices to settle the amount of the value of the lands taken, and of the compensation to be paid for injuriously affecting, the two claims cannot be split up so as to lead to two proceedings. *Bexley Heath Railway Company v. North* [1894], 2 Q. B. 579, at 585.

It is the amount claimed that determines the jurisdiction and not the amount to which the person is entitled. *Read v. Victoria Station and Pimlico Railway Company*, 32 L. J. Ex. 167.

Although the amount claimed be under 50*l.*, the parties can agree to have the question settled by arbitration. *Collins v. South Staffordshire Railway Company*, 21 L. J. Ex. 247.

"The same shall be settled by Two Justices."—As to justices generally, see definition section 3 and note.

If the justices refuse to settle the amount, they can be compelled to do so by *mandamus*. *Reg. v. Kennedy* [1893], 1 Q. B. 533; *R. v. Stone*, L. R. 1 Q. B. 529; *R. v. Vaughan*, L. R. 2 Q. B. 190. The proceeding must be by motion in the Queen's Bench Division for a prerogative writ, as the action of *mandamus* will not lie against justices even with their consent. *Baxter v. London County Council*, 63 L. T. (N.S.) 771, and see notes to section 21.

What the justices are to determine under this section is the amount of the compensation, and it does not fall within their jurisdiction to

Sect. 22. decide the question of title. The words "the same" mean the compensation, not the title. *Reg. v. Edwards*, 13 Q. B. D. 586, and see section 23, note "The same shall be so settled."

For procedure, see section 24 and notes thereto.

For principles of compensation, see note to section 63 when lands are taken, and to section 68 when injuriously affected.

Compensation exceeding 50*l.* to be settled by arbitration or jury, at the option of the party claiming compensation.

23. If the compensation claimed or offered in any such case shall exceed fifty pounds, (a) and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, (b) stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided. (c)

(a) When the amount does not exceed 50*l.*, see sections 22—24.

(b) These provisions are contained in sections 39, 40.

(c) Sections 38—57.

"If the Party claiming," &c.—It is the landowner who has the choice whether there shall be an arbitration or not. If he does not desire the amount assessed by arbitration, the question must be settled by a verdict of the jury. *Fitzhardinge v. Gloucester and Berkeley Canal Company*, L. R. 7 Q. B. 776, 781. He does not lose his right to have the value assessed because he has made no claim and because the company has proceeded under section 85. *Reg. v. Metropolitan Railway Company*, 13 L. T. (N.S.) 444.

This section applies also to the settlement of the amount of compensation claimed under section 68, *post*, in so far as it is not altered thereby. *Evans v. Lancashire and Yorkshire Railway Company*, 1 E. & B. 754.

"By Notice in Writing."—As to service of such notice, see section 134 and notes, *post*, and section 138 of the Railways Clauses Consolidation Act, 1845, *post*.

The particulars as to the "nature of the interest" required are substantially the same as the particulars of the claim required under

sections 21 and 68. See the cases collected in notes to section 21, **Sect. 23.**
note "The particulars of his claim."

"The Amount of the Compensation so claimed."—The party who takes the initiative must state the amount he claims in the notice he gives. The landowner, therefore, who desires arbitration must do so in order that the promoters may have an opportunity of considering whether they will pay him the amount he claims without arbitration or offer him a smaller sum. *Fitzhardinge v. Gloucester and Berkeley Canal Company*, L. R. 7 Q. B. 776, 781.

"The same shall be so settled."—It is the amount of compensation that is to be settled and not the title to compensation. The question of title and the enforcement of the rights of parties is left to other tribunals. This is equally true of all assessments of the value of land under this Act, whether by justices, jury and sheriff, arbitrators, or surveyors.

As to justices, this was decided in *Reg. v. Edwards*, 13 Q. B. D. 586.

As to jury and sheriff, see *Reg. v. London and North Western Railway Company*, 3 E. & B. 443; *Chabot v. Morpeth*, 15 Q. B. 446; *Ex parte Cooper*, 34 L. J. Ch. 373; *Chapman v. Monmouthshire Railway Company*, 2 H. & N. 267; *Walker v. London and Blackwall Railway Company*, 7 Jur. 1154.

As to arbitrators, see *Re Newbold*, 14 C. B. (N.S.) 405; *Reg. v. London and North Western Railway Company*, 3 E. & B. 443; *Gould v. Staffordshire Potteries Waterworks Company*, 6 Ry. Cas. 568; *Rhodes v. Airedale Drainage Commissioners*, 1 C. P. D. 402; *Brierley Hill Local Board v. Pearsall*, 9 App. Cas. 595.

If the promoters, therefore, desire to contest the right of the claimant to compensation, they cannot do so until after the amount has been assessed. *Brierley Hill Local Board v. Pearsall*, *supra*, pp. 59, 601, and the cases just cited. The promoters cannot restrain the claimants from proceeding, even when they have no title, as the Court will not grant an injunction to restrain persons from doing a mere fruitless act. *London and Blackwall Railway Company v. Cross*, 31 Ch. D. 354; and see section 25, note "Restraining arbitration," p. 64.

And even in a case under section 41 of the Railways Regulation Act, 1868, *post*, where the compensation may be assessed by a judge and jury of the High Court the same principle applies. It is merely a determination as to the amount, and the only mode of enforcing the judgment would be to bring an action in the ordinary way in the High Court. *In Re East London Railway Company (Oliver's Claim)*, 24 Q. B. D. 507; and see Lord ESHER, p. 511, on the law under the Lands Clauses Act.

If, however, promoters enter on land without compensating a person having an interest therein, or otherwise proceeding under the Act in respect thereof, he has ground for an action, and the Court has power in that action to make a declaration as to his interest in the property. *Birmingham Land Company v. London and North Western Railway Company*, 40 Ch. D. 268.

As the service of notice and reference to arbitration leaves the question of title open, the promoters are not thereby estopped from afterwards claiming the land as being their own property. *Campbell v. Mayor of Liverpool*, 9 Eq. 579.

A proviso as to title in the notice to treat will not enable the company to revoke the reference to arbitration; the effect is to reserve the point for

Sect. 23. future decision. *Re Arbitration between Chilworth Gunpowder Company and the Manchester Ship Canal Company*, 8 Times L. R. 79.

The compensation must be an amount in money and nothing else, and there is no power to grant or award any other relief. Thus, an arbitrator cannot direct or award that approaches and ways be constructed to land not taken, in lieu of communications formerly existing on the land taken. *In re Ware*, 9 Ex. 395. Nor can he apportion rent where part only of leasehold premises is taken; a method being provided for that purpose in section 119. S. C.

The verdict of a jury which awarded an additional sum in respect of the expense that would be incurred by the landowner in building a bridge between the severed portions of the land was held to be in excess of their jurisdiction. *Reg. v. South Wales Railway Company*, 13 Q. B. 988. See "Jurisdiction of jury" in note to section 50, *post*.

"For three Months," &c.—By section 31 of this Act (*see post*) the arbitrators, where two have been appointed and agree to act, are allowed 21 days after the last shall have been appointed in which to make their award; but they may enlarge that time, and according to this section it would appear that they can enlarge it to three months. As to the manner of enlargement, *see* section 31. If they do not make their award within the extended time, section 31 further provides that the matter shall be referred to an umpire to be previously appointed under section 27. The umpire has a further period of three months from the date of the reference to him within which to make his award. *Skerratt v. North Staffordshire Railway Company*, 17 L. J. Ch. 161. Where the arbitrators have failed to appoint an umpire, the same rule holds good. He has three months from the date when the duty devolves upon him. *Bradshaw's Arbitration*, 17 L. J. Q. B. 362; *Holdsworth v. Wilson*, 4 B. & S. 17. And if the date of his appointment is after the time when the arbitrators should have made their award, the three months is counted from the date of his appointment and not from the limit of the time within which the arbitrators should have made their award. *Re Arbitration between Pullen and the Corporation of Liverpool*, 51 L. J. Q. B. 285.

Where two arbitrators are appointed and one refuses or neglects to act for seven days, the other may proceed *ex parte* under section 50. That sole arbitrator would no doubt have three months in which to deliver his award, but there is no provision as to whether it is to be calculated from the date of his appointment or from the date of the appointment of the arbitrator who refuses to act, or, thirdly, from the end of the seven days. This last method would appear to carry out the principle laid down in the case of an umpire, namely, that he has three months from the date when the duty devolves upon him.

If the award is made after three months has elapsed it is invalid, if the time has not been otherwise enlarged. *Evans v. Lancashire and Yorkshire Railway Company*, 1 E. & B. 764.

Enlargement of Time for Making Award.—The time for making an award may be enlarged either—

I. *By consent of the Parties.*—The provision in this section is a power given for the advantage of the parties enabling either party to obtain a

settlement of the compensation by a jury in case of improper delay in the arbitration. This advantage they may renounce, as it was not intended to prevent an extension of the time if both parties consider it desirable. *Caledonian Railway Company v. Lockhart*, 3 Macq. Cas. H.L. (Sc.) 808; *Re Palmer and Metropolitan Railway Company*, 10 W. R. 714. Written consent for enlarging the time would not appear to be necessary if the conduct of the parties is such as to estop them from setting up the want of jurisdiction of the arbitrator. *Tyerman v. Smith*, 6 E. & B. 719; *Bennett v. Watson*, 29 L. J. Ex. 357; and see *Darley v. London, Chatham, and Dover Railway Company*, L. R. 2 H. L. 43. Sect. 23.

II. *By order of a Court or a Judge.*—Section 9 of the Arbitration Act, 1889 (see *post*), enables a court or a judge from time to time to extend the time for making an award. This section re-enacts a provision of the Common Law Procedure Act, 1854, to similar effect. Under that Act it was held that the provisions therein contained for enlarging the time for making an award applied to references under the Lands Clauses Acts, but that after unreasonable delay the Court will not exercise this jurisdiction so as to deprive the landowner of a trial by jury if he then prefers it. *In re Dare Valley Railway Company*, 4 Ch. 554. The Court may enlarge the time after the award has been made and so make it valid. *Lord v. Lee*, L. R. 3 Q. B. 404; *Re Dent and Strong*, L. R. 9 Q. B. 117; and see note to section 9 of the Arbitration Act, *post*.

“By the verdict of a Jury.”—If for any reason the arbitration proceedings prove a failure, the procedure is to have a jury summoned to assess the compensation. If the promoters neglect or refuse to do so, the Court will grant a *mandamus* to compel them. *South Yorkshire Railway Company, Ex parte Senior*, 18 L. J. Q. B. 333; *Lind v. Isle of Wight Ferry Company*, 7 L. T. 416.

For procedure as to *mandamus*, see section 21 note, “Compelling promoters to proceed,” and Appendix.

24. It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry Method of proceeding for settling disputes as to compensation by justices.

Sect. 24. shall be in the discretion of such justices, and they shall settle the amount thereof.

"Authorised to be settled by two Justices."—Questions of disputed compensation are authorised to be settled by two justices under sections 22 and 121 of this Act, see section 21, p. 52.

They are also authorised to settle questions as to apportionment of rent under sections 98, 116, and 119.

"To hear and determine such question."—"Such question" means the amount of disputed compensation, and the question of title to receive the compensation is left for the decision of other tribunals. *Reg. v. Edwards*, 13 Q. B. D. 586.

The determination of the compensation is not an order, and the provisions of Jervis's Act, 11 & 12 Vict. c. 43, as to orders have no application. The justices, therefore, have jurisdiction to hear and determine the question of disputed compensation, although the application be made more than six months after the land has been taken or injuriously affected, and they are not bound by section 11 of Jervis's Act, which limits the time for making a complaint to six months from the time when the matter of such complaint arose. S. C., which over-rules *Re Edmundson*, 17 Q. B. 67, and approves *Reg. v. Hannay*, 44 L. J. M. C. 27.

From the above decision, it follows that the determination of the amount not being an order, cannot be enforced by distress or otherwise as provided in the Summary Jurisdiction Acts. S. C., pp. 592, 594, 596.

The determination not being an order, the justices are not bound to put their decision in writing, but may deliver it verbally. *Reg. v. Boyce Combe*, 32 L. J. M. C. 67.

Justices sitting to hear and determine under this section constitute a court of summary jurisdiction under section 13, sub-section 11, of the Interpretation Act, 1889, which repeals and re-enacts sections 50 and 7 respectively of the Summary Jurisdiction Acts, 1879 and 1884. Cf., *Reg. v. Justices of Glamorganshire* [1892], 1 Q. B. 621.

The provisions of the Summary Jurisdiction Acts, 1848, 1879, 1881, and 1884, so far as they are applicable, will therefore apply to proceedings under this Act. There appears to be some doubt, however, as to the extent of their applicability. As the above section of the Interpretation Act merely makes the justices a court of summary jurisdiction, it would appear that only such provisions of the Summary Jurisdiction Acts as deal with courts of summary jurisdiction generally have any application to proceedings under this Act. Thus section 14 of the 1848 Act, which deals with the conduct of the hearing, would not appear to apply, inasmuch as that section is concerned with the hearing of complaints and informations. Similarly section 7 of the same Act, which provides for the summoning of witnesses who are likely to give evidence "in behalf of the prosecutor, complainant, or defendant" would not appear to be applicable on the same grounds, and the method of procedure for summoning witnesses would appear to be that provided by section 143 of the Lands Clauses Act, 1845, *post*.

The principal sections of the Summary Jurisdiction Acts which appear to be applicable are sections 20, 33, and 41 of the Act of 1879 (42 & 43 Vict. c. 49), and section 4 of the Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24).

Section 20 of 42 & 43 Vict. c. 49, provides that a case arising under that or any other Act "shall not be heard, tried, determined, or adjudged by a court of summary jurisdiction, except when sitting in open court," and "open court means a petty sessional court-house or an occasional court-house," which terms are also defined in the same section. **Sect 24.**

Section 33 of the same Act provides that "any person aggrieved who desires to question a conviction, order, or determination or other proceeding of a court of summary jurisdiction on the ground that it is erroneous in point of law, or is in excess of jurisdiction may apply to the Court to state a special case," and further, "if the Court decline to state the case may apply to the High Court of Justice for an order requiring a case to be stated." The application is to be made and the case stated according to the rules under that Act; the Rules of the Supreme Court and subject thereto, the provisions of 20 & 21 Vict. c. 43, so far as applicable, shall apply thereto. See *Bexley Heath Railway Company v. North* [1894], 2 Q. B. 579, where a case was stated under this section; and see also *Reg. v. JJ. of Glamorganshire* [1892], 1 Q. B. 621.

Section 41 of the same Act allows the service of any summons, process, or document to be proved by a solemn declaration taken before a justice of the peace, commissioner for oaths, clerk of the peace, or registrar of a county court.

Section 4 of the Act of 1881, provides for the service of any process of an English court of summary jurisdiction in Scotland.

"And the Costs."—Under a local Act which empowered justices to give full compensation, it was held, although nothing was said as to costs, that full compensation necessarily included the costs of applying to justices. *Mayor of Huddersfield v. Shaw*, 54 J. P. 724.

"They shall settle the amount."—In settling the amount regard must be had not only to the nature of the land taken but to the damage caused by severance and other injurious affection to the land held therewith. Section 63. For the principles in assessing the value of land, see notes thereto. For the principles in assessing the compensation for injuriously affecting land not held with land taken, see notes to section 68.

25. When any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters or any two of them, or of their secretary or clerk, and on the part of any other party under the hand of such party, or if

Appoint-
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arbitrator
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Sect. 25. such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

Sections 25—37 deal with the procedure for settling compensation by arbitration, with which must also be read the Arbitration Act, 1889, *post*.

“Authorised or required to be settled by Arbitration.”—If the claim for the value of the lands taken and the damage for injuriously affecting lands held therewith, either alone or together exceed 50*l.*, section 23 provides that it shall be settled by arbitration if the party claiming compensation so desire it, with the exception in the case of interests less than that of a yearly tenant. See section 121.

Arbitrations are also authorised under section 64 where the owner has been absent from the United Kingdom, and the value has been assessed by a surveyor in accordance with section 58. The absent owner may have the amount submitted to arbitration.

Section 130 also authorises arbitration to settle the differences as to price, when any person is entitled to pre-emption in respect of superfluous lands and desires to purchase them. See section 21, note, “Shall be settled in manner hereinafter provided.”

Arbitration by Agreement.—It is open to the parties to agree to any question of compensation being referred to arbitration under this section, although, for example, the interest of the claimant be not greater than that of a tenant from year to year. In such cases there is no necessity for a perfect compliance with all the statutory forms. The notices required by the Act are only necessary when no option is exercised, and it is doubtful what the claimant may require. So also the

appointment of the arbitrator on the part of the company if signed by their secretary is valid. *Collins v. South Staffordshire Railway Company*, 21 L. J. Ex. 247. **Sect. 25.**

Similarly, where the parties agree that they shall refer the amount of compensation to a person as sole arbitrator, which person is to be nominated by two others, it was held that this was not a reference under this statute, but a general reference under its provisions, and that the plaintiff was entitled to his costs, although nothing was said as to them in the submission. *Martin v. Leicester Waterworks Company*, 3 H. & N. 463.

A submission may by consent be made to embrace incidents and import powers not included in a reference proceeding simply on the statutory clauses. It may be based on the statute and on the common law, and derive efficacy from both, and it would appear that if it is intended to be conducted under the sanction of the Act, the statutable incidents, so far as applicable, will apply. Thus, the death of the landowner will not revoke the submission to arbitration. *Caledonian Railway Company v. Lockhart*, 3 Macq. H. L. (Sc.) 808.

The provisions of the Arbitration Act, 1889, will be applicable in such cases in so far as they are not inconsistent with the agreement. Section 24.

"Shall concur in the appointment of a single Arbitrator."—

It has been stated that this section appears to enact that an endeavour should first be made by the parties to concur in choosing a single arbitrator, and that in the event of this failing a request should be made by the one to the other that the latter should nominate an arbitrator. *Collins v. South Staffordshire Railway Company*, 29 L. J. Ex. 447.

Where two arbitrators and an umpire have been appointed, the case is properly brought within section 25, and the award will not be set aside because no attempt has been made to appoint a single arbitrator. *Eagle v. Charing Cross Railway Company*, 36 L. J. C. P. 297.

"Each party . . . shall nominate and appoint an Arbitrator."

—A nomination is not effective until notice has been given to the other party. *Tew v. Harris*, 11 Q. B. 7.

The nomination or appointment must be delivered to the arbitrator, and notice thereof must be given to the other party. It is not enough that there should be a notice of intention to appoint, as the person stating such to be his intention would not be bound thereby. *Bradley v. London and North-Western Railway Company*, 5 Ex. 789.

Objections to Arbitrator nominated.—KNIGHT BRUCE, V.C., stated that the surveyor of a railway company who had, in that character, treated with a landowner and offered a price for land required by the company, ought not to have been selected as arbitrator in respect of the land. The landowner in this case protested, but subsequently appointed an arbitrator to act on his behalf, and the arbitration was proceeded with. It was held that the landowner by so proceeding could not object later. It would appear that he ought to have retired from the arbitration if he meant to make his objection effectual. *Elliot v. South Devon Railway Company*, 2 De G. & S. 17.

In the same case objection was taken to the umpire on the ground that he was the surveyor of the Great Western Railway Company and a shareholder therein, the South Devon line being an extension of that line

Sect. 25. and to be worked with it, and the Great Western Railway were shareholders to a large amount in the South Devon Railway Company. The Court, however, refused to set aside the award on this ground, but the Vice-Chancellor said that it was saved very narrowly. S. C., p. 29.

Where a valuer has been called in by a railway company in other cases to value land on their behalf and to give evidence in these other cases, this, it would appear, is a good objection to his being appointed umpire; but it is an objection that may be waived, and if the landowner, after it comes to his knowledge before the award has been made, allows matters to proceed and does not take the objection till some time after the award is made, he must be taken to have waived the objection and the Court will refuse to set aside the award. *Clout v. The Metropolitan and District Railway Company*, 46 L. T. 141.

Restraining Arbitration.—The Court has jurisdiction to restrain a party from proceeding to arbitration, and will do so if it is satisfied that injury will result to the party complaining if the arbitration is allowed to proceed, but it will not exercise its jurisdiction when it sees the result will be merely futile. *Farrer v. Cooper*, 44 Ch. D. 323; see *Wood v. Lillies*, 61 L. J. Ch. 185.

But it has no jurisdiction to restrain a party from proceeding with an arbitration in a matter beyond the agreement to refer, although such arbitration may be futile and vexatious, on the ground that no Court can issue an injunction in a case where, if the thing went on, there would be no legal injury. *North London Railway Company v. Great Northern Railway Company*, 11 Q. B. D. 30.

On the same grounds, if a person falsely assume the authority of another and serve a notice on a railway company on behalf of himself and that other, the Court has no jurisdiction to interfere to restrain him from proceeding to arbitration under the notice. *London and Blackwall Railway Company v. Cross*, 31 Ch. D. 354.

The Court has jurisdiction to restrain an arbitration if an arbitrator is guilty of corruption (*Malmesbury Railway Company v. Budd*, 2 Ch. D. 113); or if he is unfit or incompetent to act by reason of personal misconduct (*Beddow v. Beddow*, 9 Ch. D. 89). See Arbitration Act, 1889, s. 11 and note, *post*.

The company, by appointing an arbitrator under protest under this section, does not thereby admit that the claimant is entitled to compensation, and that being so the Court will not grant an injunction to restrain the proceeding to arbitration. *Sutton Harbour Improvement Company v. Hitchens*, 1 De G. M. & G. 161.

"A Submission to Arbitration."—After some conflict of decision, it was clearly settled that the appointment of an arbitrator under this section was a submission to arbitration on the part of the party making the same, and the arbitration being therefore an arbitration by consent, it came within the provisions of the Common Law Procedure Act, 1854, as to arbitrations by consent. Therefore, under that Act the arbitrator had power to state a case for the opinion of the Court (*Rhodes v. Airedale Drainage Commissioners*, 1 C. P. D. 402; *Bidder v. North Staffordshire Railway Company*, 4 Q. B. D. 412); or to extend the time for making the award (*Re Dare Valley Railway Company*, 4 Ch. 554); and the submission might be made a rule of court (*Ex parte Harper*, 18 Eq. 539; and see *In re Harper*, 20 Eq. 39).

This, however, does not apply to an arbitration under the Public Health Act, 1875. *Bexley Local Board v. West Kent Sewerage Board*, 9 Q. B. D. 218; *In re Mackenzie*, 17 Q. B. D. 114, and see that Act, *post*. Sect. 25.

Sections 3—17 of the Common Law Procedure Act, 1854, which dealt with arbitrations, have, however, been repealed by section 26 of the Arbitration Act, 1889, and section 24 of this later Act makes that Act apply to all arbitrations except in so far as it is inconsistent with the Act regulating the arbitration. The Act of 1889 practically re-enacts the provisions of the Common Law Procedure Act, 1854, so that, assuming the same decisions to apply, the time for making the award may be extended by a court or a judge under section 9, and a special case may be stated under section 19, or the award may be stated in the form of a special case under section 7 (b). See the Arbitration Act, 1889, *post*, and cases cited in the notes thereto.

The submission has now the effect of a rule of Court. Section 1.

Revocation.—Section 1 of the Arbitration Act, 1889, provides that submissions shall be irrevocable, except by leave of a court or a judge; and it would appear that the court or a judge has power under this section of the Lands Clauses Act and the Arbitration Act, to revoke a submission. *In re Lord Gerard and London and North Western Railway Company* [1895], 1 Q. B. 459.

Submissions under agreements by which the arbitration is to be carried out pursuant to the Lands Clauses Acts would come under this rule. The Court has jurisdiction to revoke a submission if the arbitrator is going wrong in a point of law, and will exercise it unless the parties agree to the arbitrator raising the questions in a special case. *East and West India Dock Company v. Kirk and Randall*, 12 A. C. 738; *Tabernacle Permanent Building Society v. Knight* [1892], A. C. 298, p. 301.

The Court has also revoked a submission where the arbitrator after his appointment has entered into litigation with one of the parties. *Re Baring Brothers and Company and Doulton and Company*, 61 L. J. Q. B. 704.

The Court refused to revoke a submission where the notice to treat contained a qualification as to the interest of the parties, and the arbitrators were proceeding to deal with the question as if there was no such qualification. *Re Chilworth Gunpowder Company*, 7 T. L. R. 79.

“May appoint such arbitrator to act on behalf of both Parties.”—An appointment by the claimant of an arbitrator to act for both parties is not valid unless he has previously appointed an arbitrator on his behalf and notified the same to the company.

A claimant requested a company to appoint an arbitrator on their behalf, stating that it was his intention to appoint a certain person as arbitrator, and that if for the space of fourteen days after that notice the company failed to appoint an arbitrator on their behalf he would appoint that person to act for both. The company having refused to refer the matter to arbitration, the claimant after the fourteen days served them with a notice stating that he had appointed that person as his arbitrator, and that he then appointed him to act for both. The arbitrator made an award, but the Court refused on motion either to enforce it or to set it aside on the ground that the arbitrator had not been validly appointed. *Bradley v. London and North-Western Railway Company*, 5 Ex. 769.

Sect. 26.

Vacancy
of arbit-
rator to
be sup-
plied.

26. If, before the matters so referred (a) shall be determined, any arbitrator appointed by either party die, or become incapable, (b) the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

(a) Section 25.

(b) If he refuse or neglect, see section 29.

See also section 6 of the Arbitration Act, 1889, *post*.

"Shall have the same Powers."—The arbitrators under section 31 have 21 days from the day on which the last shall have been appointed within which to make their award. They may, however, extend the time to three months under section 23, which period is probably to be calculated in a case under this section from the date of the appointment of the new arbitrator (see note to section 23).

Appoint-
ment of
umpire.

27. Where more than one arbitrator shall have been appointed (a) such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special Act, and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

(a) As to appointment, see section 25.

"Before they enter upon the Matters referred."—Although under section 31 the award of the arbitrators if the time is not enlarged must be given within 21 days, this incapacity to make an award has no effect upon the power given to the arbitrators under this section, nor to the Board of Trade under section 28 to appoint an umpire, nor to appoint a new umpire in case of the death or failure of the first. They may appoint him within three months; the time limited by section 23. *Bradshaw's Arbitration*, 12 Q. B. 562, 575; *Holdsworth v. Wilson*, 32 L. J. Q. B. 289.

If arbitrators have been appointed under section 25, and one arbitrator refuses or neglects after seven days to concur in the appointment of an umpire, the other arbitrator has power under section 30 of this Act to proceed, *ex parte*, to make an award and the previous appointment of an umpire is not in such a case, a condition precedent to the *ex parte* proceedings. *Shepherd v. Corporation of Norwich*, 30 Ch. D. 553. Sect. 27.

See section 28 as to applying to the Board of Trade in cases where the arbitrators refuse or neglect to appoint an umpire.

"Nominate and appoint an Umpire."—The appointment must be a matter of choice and not of chance. It must not be made by drawing lots. *In re Cassell*, 9 B. & C. 624; *Pescod v. Pescod*, W. N. (1888) 2.

If, however, they each choose an umpire whom the other considers a proper person, and draw lots as to which of the two is to be chosen this will be valid. *Neale v. Ledger*, 16 East 51; *In re Hooper*, L. R. 2 Q. B. 367.

As to who may be appointed, see section 25, note, "Objection to arbitrator nominated."

"On which they shall differ."—It is a general rule that where arbitrators agree on some points, but differ as to others, that when the case is referred to the umpire, he must award on all, as if the arbitrators had disagreed on all, and an award in which both arbitrators and umpire joined, in which it was stated that the arbitrators decided certain points, but did not agree on one, which was referred to the umpire who decided it, was held to be bad. *Tollit v. Saunders*, 9 Price 612, following principle in *Roll Ab. Arb. (P.)* 7, 262.

But this rule does not apply if the contrary is expressed in the submission. *S. C.*, p. 619.

When the arbitrators differ, they usually give notice thereof to the arbitrator in writing. See the proviso, Sched. I. (d) of the Arbitration Act, 1889, and section 2.

"Or which shall be referred to him."—By section 31 it is provided that if the arbitrators, if two are appointed and act, do not give their award within 21 days, or within the extended time (if any) the matters referred to them shall be determined by the umpire.

When an umpire had sat for one day with the two arbitrators, and on the second day, one of the arbitrators did not attend, and no notice was given that the other one would proceed *ex parte* under section 30, but the one arbitrator and the umpire sat together and examined a witness, the party who had appointed the absent arbitrator having protested and withdrawn without calling his witnesses, and nothing more being done until after the time had expired, within which the arbitrators should award, when the umpire without giving notice, or hearing the witnesses of the absent party, gave his award, it was held that the award was bad and it was set aside. *Hawley and the North Staffordshire Railway Company*, 2 De. G. & S. 33.

The non-attendance of the arbitrator did not in the absence of collusion or fraud estop the person who had appointed him, and he was not bound by what passed at the meeting in the absence of the arbitrator. *S. C.* 2 De. G. & S., p. 45.

Sect. 27. "If such Umpire shall die," &c.—There is no provision as to what is to happen in the event of the umpire refusing or neglecting to act, in which case probably section 5 of the Arbitration Act, 1889, would apply, see *post*.

28. If in either of the cases(a) aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, the Board of Trade, *in any case in which a railway company shall be one party to the arbitration, and two justices in any other case*, shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

(a) These are the cases mentioned in section 27.

The words in italics have been repealed by the Lands Clauses (Umpire) Act, 1883 (46 Vict. c. 15), *post*.

This section is not applicable where one of the two arbitrators refuses to appoint an umpire or otherwise neglects to act. The one arbitrator can then proceed *ex parte* under section 30, in which case an umpire is unnecessary. *Shepherd v. Corporation of Norwich*, 30 Ch. D. 553.

The Board of Trade shall Appoint.—The Board of Trade may appoint an umpire, although the time for making the award by the arbitrators has elapsed; and the same rule applies either to the first appointment, or in case of death to the appointment of a new umpire. *Re Bradshaw's Arbitration*, 12 Q. B. 562, 575.

The Board of Trade Arbitration Act, 1874, s. 6, which allows the Board of Trade to appoint the Railway Commissioners to be umpire, does not apply to this section, as the appointments under the Lands Clauses Acts are specially exempted.

It may be noted that by 9 & 10 Vict. c. 105, ss. 2 and 9, the powers of the Board of Trade in respect of railways were transferred to the Railway Commissioners. That Act was, however, repealed by 14 & 15 Vict. c. 64, and the powers re-transferred to the Board of Trade. By section 3 of that Act it is provided that where the Board of Trade are authorised by any Act relating to railways to make any appointment, they may signify such appointment "by a written or printed document signed by one of the joint secretaries, or by some assistant secretary or other officer appointed by them to sign documents relating to railways." Such document is to be received in evidence without proof of signature or authority.

In case of
death of
single
arbitrator

29. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall

be determined by arbitration under the provisions of this or the special Act in the same manner as if such arbitrator had not been appointed. Sect. 29.
the matter
to begin
de novo.

The procedure will, in the event of the death or incapability of the arbitrator, be according to section 25.

The statute contemplates three cases where a single arbitrator is to award: (1) where a single one is originally appointed under section 25; (2) where a vacancy is left unsupplied under section 26; and (3) where one of the two refuses or neglects to act under section 30. *Bradshaw's Arbitration*, 17 L. J. Q. B. 362, 366. This section seems to refer only to the case where a single arbitrator has been appointed; it is apparently doubtful whether it would apply to the second and third of these cases. Possibly section 5 of the Arbitration Act, 1889, might in such a case be applicable.

30. If, where more than one arbitrator shall have been appointed, (a) either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties. If either
arbitrator
refuse to
act the
other to
proceed *ex*
parte.

(a) Section 25.

"Refuse."—If one of the arbitrators absents himself this is not a refusal within this section, nor, apparently, is it a refusal if he expresses a wish that they should proceed without him. *Hawley v. North Staffordshire Railway Company*, 2 De G. & S. 33.

The refusal to act may take place immediately the arbitrators are appointed and no other step taken; they need not have entered upon the matters referred to them; it may take place either before or after an umpire is appointed. If one arbitrator refuse before the umpire is appointed the other may proceed *ex parte*, and as no umpire would be required to settle differences between them no steps need be taken to have one appointed. *Shepherd v. Corporation of Norwich*, 30 Ch. D. 553.

In a case where a private Act provided that if the arbitrator should "neglect or refuse to act" another might be appointed, it was held that the word "neglect" imported no degree of blame, but that merely allowing the time to elapse was sufficient. *Willoughby v. Willoughby*, 9 Q. B. 923.

31. If, where more than one arbitrator shall have been appointed, (a) and where neither of them shall refuse or neglect to act as aforesaid, (b) such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within If arbitra-
tors fail to
make their
award
within
twenty-
one days
the matter

Sect. 31. such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid. (c)

to go to
the
umpire.

(a) That is, under section 25.

(b) That is, provided for in section 30.

(c) As to appointment of umpire, see sections 27 and 28.

"Such extended time."—The arbitrators can extend the time for three months, under section 23, or longer if the parties consent, and the umpire has a period of three months from the date when the duty devolves upon him. See cases collected in the note to section 23, "Enlargement of time for making award," p. 58.

If the arbitrators fail to make their award within the time, this section does not render the submission void, and the other powers incidental thereto, such as the appointment of an umpire, may be exercised. *Re Bradshaw's Arbitration*, 12 Q. B. 562.

If the arbitrators disagree the matters may be referred to the umpire by notice in writing under section 2, Schedule I. (d), *post*.

Power of
arbitrators
to call for
books, &c.

32. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

See similar proviso, Arbitration Act, 1889, section 7 (a), and see Schedule I. (f), and section 2.

"May call for the production of any Documents."—By section 8 of the Arbitration Act, 1889 (see *post*), any party may sue out a writ of subpœna *duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action. And see section 18 of that Act (*post*), as to compelling the attendance of witnesses anywhere within the United Kingdom.

Attendance of Witnesses.—By section 8 (*post*) of the Arbitration Act any party to a submission may also sue out a writ of subpœna *ad testificandum*.

By section 18 of the same Act (*post*), the court or a judge may order that writs of subpœna—*ad testificandum* or *duces tecum*—shall issue to compel the attendance before an arbitrator or umpire of a witness wherever he may be within the United Kingdom, and may also order that a writ of *habeas corpus ad testificandum* may issue to bring up a prisoner for examination before any arbitrator or umpire.

Writs of subpœna issue as, of course, under section 8. They issue at the Writ Department, Central Office. For practice, see notes to Arbitration Act, 1889, *post*, sections 8 and 18.

"May examine the parties or their witnesses on oath."—Sect —
 Arbitrators are bound where they are not expressly absolved from doing so to observe in their proceedings the ordinary rules which are laid down for the administration of justice, and the Court when called upon to review their proceedings is bound to see that those rules have been observed. *Haigh v. Haigh*, 31 L. J. Ch. 420.

It is not absolutely necessary to take the evidence upon oath, but it is the ordinary practice, and if taken otherwise, both parties must waive its being taken upon oath. *Wakefield v. Llanelli Railway and Dock Company*, 34 Beav. 245.

See also provision (f) in the provisions to be implied in submissions unless a contrary intention is expressed. Schedule I. and section 2 of the Arbitration Act, 1889, *post*. Section 22 of the Arbitration Act, 1889, provides that any person giving false evidence before an arbitrator or umpire shall be guilty of perjury.

It appears that an arbitrator may consult men of science in every department where it becomes necessary (*Caledonian Railway Company v. Lockhart*, 3 Macq. H. L. (Sc.) 808, p. 823), and if not restricted by the terms of submission he may call in a valuer to assist him, provided he does not delegate his authority to such valuer. S. C., and also *Anderson v. Wallace*, 3 Cl. & F. 26.

He may also consult a lawyer, but it is very improper to call in the attorney of one of the parties to assist him in framing the award, although he may be the arbitrator's usual attorney. *Underwood and Bedford Railway Company*, 11 C. B. (N.S.) 442.

Form of Oath.—See Form in Appendix. If the witness desire it the oath may be administered in the Scotch form. (Oaths Acts, 1888, 51 & 52 Vict. c. 46, s. 5.) See Form in Appendix.

Affirmation.—If the witness object to be sworn and state as the ground of his objection, either that he has no religious belief or that taking an oath is contrary to his religious belief, he shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is or shall be required by law. The affirmation is to be of the same effect as an oath, and any person giving false evidence upon affirmation may be prosecuted for perjury. (Oaths Act, 1888, 51 & 52 Vict. c. 46, s. 1.) See Form in Appendix.

If an oath has been duly administered and taken, its validity is not affected by reason of the absence of religious belief in the party taking it. *Ib.*, section 3.

The arbitrator before allowing any person to affirm must learn from him if the ground of his objection is either of the two above mentioned. If his objection arises from any other cause the witness must be sworn.

Tendering Evidence.—The arbitrator must give the parties opportunity of being heard and of tendering evidence, and if he do not do so the award will be set aside. *Hawley and North Staffordshire Railway Company*, 2 De. G. & S. 33; S. C. affirmed on appeal, 5 Ry. C. 383.

But where an arbitrator has made an appointment and one of the parties, although under the mistaken belief that there will be notice of another meeting before an award is made, goes away without tendering evidence, or giving notice that he meant to offer any evidence, the arbitrator may proceed *ex parte*, and without further notice make an award. A rule to set aside the award could only be granted on the

Sect. 32. terms of paying all the costs of the reference and of the rule. *Tryer v. Shaw*, 27 L. J. Ex. 320.

A rule was granted on the same terms where one party refused to attend on the ground of not having the evidence ready, but without giving any reason for the delay. *In re Hewett and Portsmouth Waterworks Company*, 10 W. R. 780.

The arbitrator has power to postpone the hearing if one party has been taken by surprise and has not his evidence ready, but if no application is made to him to do so the award will not afterwards be set aside on the ground of such surprise. *Solomon v. Solomon*, 28 L. J. Ex. 129.

Arbitrator
or umpire
to make a
declara-
tion.

33. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in the presence of a justice make and subscribe the following declaration ; that is to say,

“I, *A. B.*, do solemnly and sincerely declare, That I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Act [*naming the special Act*]. *A. B.*

“Made and subscribed in the presence of _____.”

And such declaration shall be annexed to the award when made ; and if any arbitrator or umpire having made such declaration shall act contrary thereto he shall be guilty of a misdemeanor.

“**Before any Arbitrator or Umpire shall enter,**” &c.—If there is any delay on the part of arbitrators or umpire making the declaration, it is not material provided that it is made before they enter upon the consideration of any matters referred to them. *Bradshaw's Arbitration*, 12 Q. B. 562.

As the arbitration clauses are made for the protection of the parties, they can be waived by the parties consenting to do so. *Palmer v. Metropolitan Railway Company*, 31 L. J. Q. B. 259.

If a party wishes to set aside an award on the ground that no declaration has been made, he must show very clearly that he did not know that no declaration had been made. Thus, in a case where the submission contained other matters than the question of compensation, and was, therefore, not clearly under the Lands Clauses Act, and the affidavits did not clearly show that the party applying was ignorant that the declaration under this section had not been made, the Court refused to grant a rule. *Re Levick v. The Epsom and Leatherhead Railway Company*, 1 L. T. (N.S.) 60.

“*In the presence of a Justice.*”—The declaration under this section may be made before a justice of any county, and need not be made before the justice of the peace of the county within which the dispute arose. *Davies v. South Staffordshire Railway Company*, 21 L. J. M. C. 52.

"Under the provisions of the Act."—As to what they must have regard to, see section 49, and as to principles of compensation, see notes to sections 63 and 68. **Sect. 34.**

34. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions. Costs of arbitration how to be borne.

"All the Costs of any such Arbitration."—The words "such arbitration" refer to any arbitration which may fall within the description in section 25. To use the words of that section, the provisions that follow that section are to take effect "when any question of disputed compensation by this or the special Act or any Act incorporated therewith, authorised or required to be settled by arbitration, shall have arisen." *Metropolitan District Railway Company v. Sharpe*, 5 A. C. 425.

In that case the special Act incorporated the Lands Clauses Act except where expressly varied. The special Act contained provisions as to how the arbitration should be conducted, but none as to costs. The arbitrator awarded compensation, but said nothing as to costs. It was held that the claimant was entitled to costs as the special Act did not repeal the provision as to costs in the general statute.

The costs of arbitrations under section 68 are also governed by this section. S. C., and see *Richardson v. South Eastern Railway Company*, 20 L. J. C. P. 236.

The same principle was applied where an agreement was made to take lands before the special Act was obtained, the parties during the arbitration having treated it as an arbitration under the Lands Clauses Act. *Callling v. Great Northern Railway Company*, 21 L. T. (N.S.) 17.

In a case where the parties referred a claim for compensation to arbitration under agreement and not under this Act, and neither the award nor the deed of reference made any provision as to costs, it was held that the claimant was not entitled to receive costs. *Ex parte Reynal*, 5 R. C. 60.

Where the submission is silent as to costs under an agreement outside the Lands Clauses Acts, the costs would now be in the discretion of the arbitrator. Arbitration Act, 1889, s. 2, Sched. I (i).

As to costs in arbitrations under the Public Health Act, see *post*.

"And Incident thereto."—These do not include the costs of preliminary negotiations, and landowners should expressly provide for these costs. See also section 52, and notes.

As to costs of arbitration where party has been out of the kingdom, see section 67.

This would include the costs of the award. Cf., *In re Walker and Son and Brown*, 9 Q. B. D. 434. See section 35, note "The arbitrator shall deliver."

The costs of stating a special case and of the appeal are also included as being incident to the arbitration and the Court has no jurisdiction

Sect. 34. over them. *In re Holliday and Mayor of Wakefield*, 20 Q. B. D. 699, 720; (1891) A. C. 81, p. 106; and see *In re Knight and Tabernacle Permanent Building Society* [1892], 2 Q. B. 613. As to costs occasioned by death of umpire, see *Reg. v. Manley Smith*, 10 R. 611.

"To be settled by the Arbitrators."—This section must be read together with the Lands Clauses Consolidation Act, 1869 (*post*), section 1 of which provides that "the costs of and incidental to the arbitration and award shall, if either party so requires, be taxed and settled as between the parties by any one of the taxing masters of the superior courts of law."

In the case of an inquiry before a jury a provision of a similar kind is provided by section 52 of the Lands Clauses Consolidation Act, 1845.

Arbitrations under agreements including matters not comprised in the Lands Clauses Acts are outside section 1 of the Lands Clauses Consolidation Act, 1869. *Doulton v. Metropolitan District Board of Works*, L. R. 5 Q. B. 333.

Agreements may be made excluding the Lands Clauses Consolidation Act, 1869, in which case the costs may be taxed under the Attorneys and Solicitors Acts. *Wombwell v. Corporation of Barnsley*, 36 L. T. (N.S.) 708.

In such cases, Schedule I. (i) of the Arbitration Act, 1889, *post*, would probably apply unless inconsistent with the agreement. See section 2 of that Act. The arbitrator would then have power to settle the costs.

See the cases as to taxation collected under section 1 of the Lands Clauses Consolidation Act, 1869.

Prior to the Lands Clauses Consolidation Act, 1869, questions arose as to whether the arbitrators or umpire should settle the costs in their award or in a subsequent instrument. In *London and North-Western Railway Company v. Quick*, 5 R. C. 520, it was held that the umpire ought to ascertain whether the claimant's right to costs arises, and, if so, include them in his award, and that he had no power to grant a subsequent certificate for them. This was, however, overruled in *Gould v. Staffordshire Potteries Waterworks Company*, 5 Ex. Rep. 214, where it was laid down that the amount of compensation should be awarded in the first instance, and that after it had been decided the question of costs would subsequently arise and the assessment be made by a subsequent document. The same case also decided that the words, "the arbitrators" included "the umpire," and that in the event of his making the award, he would be the proper person to assess the costs, and further that the adjudication of the costs need not be made within three months from the date of the reference.

It may be noticed that in arbitrations where Schedule I. (i) of the Arbitration Act, 1889, would apply, that the amount of costs to be paid must be stated in the award itself or otherwise the costs are liable to taxation in the usual course. *In re Prebble and Robinson* [1892], 2 Q. B. 602.

The arbitrator in such a case is liable to have his own costs taxed (S. C.), but if he settle the amount of his costs in the award they cannot be taxed. *In re Stephens and Liverpool and Globe Insurance Company*, 36 Sol. J. 464.

"The same or a less sum than shall have been offered."—There is no provision in the Act requiring the promoters to offer any sum, but if they do not offer any sum, then under this section they must pay the costs. *Martin v. Leicester Waterworks Company*, 3 H. & N. 463.

Where the landowner claimed in respect of two distinct matters,

namely, for the land taken and for injuriously affecting other land, and the umpire awarded in the case of the land taken more than the company offered in respect of that matter, and in the other case awarded nothing, the company having offered nothing, and the landowner having suffered no damage, it was held that he was only entitled to such costs of the arbitration as were incident to that part of his claim in respect of which compensation had been awarded. *R. v. Biram*, 17 Q. B. 969. Sect. 34.

In making an offer for compensation, the offer should not be a lump sum for compensation and costs. The offer must simply be of a sum for compensation, and must be plain and unconditional. Thus, in a claim for compensation for injuriously affecting land, where the offer was 100*l.* in full satisfaction for all injury and for all costs and charges, and the jury found the amount of the injury to be 75*l.*, the offer was held to be bad, and the claimant entitled to his costs under section 51. *Balls v. Metropolitan Board of Works*, L. R. 1 Q. B. 337; cf., however, *Fates v. Mayor of Blackburn*, 29 L. J. Ex. 447, where such an offer was made, and the claimant disallowed his costs; the point does not appear, however, to have been taken.

But where the claim for injuriously affecting has been divided into two parts, namely, for loss of business and structural damage, and the offer of the company has been 50*l.* for loss of business, and 100*l.* for structural damage, and the verdict of a jury was 100*l.* for loss of business, and 50*l.* for structural damages, the Court held that the total sum offered was to be regarded, and that the jury ought only to have found the aggregate, and that the claimant was not entitled to his costs under the similar provision in section 51. *Hayward v. Metropolitan Railway Company*, 4 B. & S. 787.

See also note to section 51. As to costs where the compensation has been paid into the bank, see section 80.

In a claim under section 68, where one head of claim was good and another bad, it was held that the claimant was not entitled to recover the costs incurred in the arbitration in connection with that head of claim which had failed. *Sharpe v. Metropolitan Board of Works*, 4 Q. B. D. 645, 652.

Time for Making the Offer.—There is no time fixed by the statute as to the time when the offer is to be made, but the question was discussed fully in *Fishardings v. Gloucester and Berkeley Canal Company*, L. R. 7 Q. B. 776. In that case the final offer was made by the promoters after the claimant had requested that the matter should be referred to arbitration under section 23, and at the time when the promoters in pursuance thereof completed the appointment of their arbitrator by giving notice of his appointment to the claimant. The Court held that this offer was made in time, and the grounds of their decision appear to be that it was made before the claimant could have incurred any costs, and that the words "shall have been offered" mean offered at or before the commencement of the arbitration, and that the arbitration commences at the very time that notice is given of the appointment of an arbitrator.

In the case of *Yates v. Mayor of Blackburn*, 29 L. J. Ex. 447, which arose under section 68, the claimant, at the end of the 21 days therein allowed to the promoters to agree to pay the amount claimed, appointed an arbitrator, and gave notice thereof to the promoters, who then made an offer. This offer was held to have been in time, for although the claimant had incurred costs, yet he had not followed the steps laid

Sect. 34. down in section 25, and it did not appear that he had delivered the appointment to the arbitrator.

The principles laid down in *Fitzhardinge's Case* were followed in *Gray v. The North Eastern Railway Company*, 1 Q. B. D. 696. The offer there was made after the arbitrators and umpire had been appointed. This was held to be too late, the time mentioned in *Fitzhardinge's Case* being regarded as the limit, and it was laid down that it did not matter after the arbitration had once begun whether costs have or have not been incurred, and whether they are large or small.

The above cited cases have also decided clearly that if the company have made an offer they may withdraw it and make another, up to the time when the arbitration begins.

Recovery of the Costs.—The costs may be recovered by action, when the claimant is entitled to them, and the action can be maintained although the amount has not been previously settled or ascertained by taxation. *Metropolitan District Railway Company v. Sharpe*, 5 A. C. 425, approving *Holdsworth v. Wilson*, 4 B. & S. 1, see also *Martin v. Leicester Waterworks*, L. J. 27 Ex. 432; *Collins v. South Staffordshire Railway Company*, 7 Ex. 5.

In the case where the costs have not been taxed, it was held that an action would lie on the ground that the right to recover them is given by the statute, and that settlement or taxation is merely a mode of determining in a quasi-judicial manner by a ministerial officer of the Court disputed questions of amount when they arise. The judge in giving judgment may, therefore, make an order for the taxation. *Metropolitan District Railway Company v. Sharpe*, *supra*.

In a case where land is taken the claimant is entitled to bring an action for his costs within a reasonable time, and it is no defence to such an action that he may not be able to make out a good title to the land. It is not a condition precedent that he should have executed the conveyance. A *bond fide* claimant is by this section entitled to the costs of the arbitration, and when he gets them he is entitled to keep them, whether his title to the land turn out good or bad. *Capell v. Great Western Railway Company*, 11 Q. B. D. 345.

In cases under section 68, where the claimant takes the initiative, it may be that if he fails to establish his title to the lands, that he should not have the costs of the inquiry as to the compensation. *Todd v. Metropolitan District Railway Company*, 24 L. T. 435, and see this case discussed in *Capell v. Great Western Railway Company*, *supra*.

The costs cannot be enforced by means of a proceeding to have it declared that the landowner has a lien. The vendor has no lien for the costs. *Ferrers v. Staffordshire and Uttoxeter Railway Company*, 13 Eq. 524.

They may, perhaps, also be enforced by *mandamus*, and rules *nisi* have been granted to enforce them; but the rule will not be made absolute if there is any reasonable doubt or question, the Courts having considered that it is more suitable that the matters should be discussed in an action. *In re London and North Western Railway Company and Quick*, 5 R. C. 520, referred to in *Gould v. Staffordshire Waterworks Company*, 5 Ex. 214, p. 221; *Mackenzie v. Sligo and Shannon Railway Company*, 9 C. B. 250; *R. v. Biram*, 17 L. J. Q. B. 304..

As to procedure on *mandamus*, see section 21, note, "Compelling promoters to proceed."

In cases under section 68, if the claim is bad, the claimant will not be entitled to any costs although no offer has been made. *Tod v. Metropolitan District Railway Company*, 24 L. T. 435, and *Sharpe v. Metropolitan District Railway Company*, 4 Q. B. D. 645, 652, 656; not appealed as to this point, see 5 A. C. 425. Sect. 34.

The costs of an inquiry before a jury can be recovered by distress warrant under section 53, but that section does not appear to apply to costs under this section, and there is no similar proviso applicable thereto.

35. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose. Award to be delivered to the promoters of the undertaking.

As to the form of the award, see section 37 and notes, *post*, p. 80.

As to what the arbitrators are to take into account in assessing the compensation, see section 63, and as to the principles of compensation for injuriously affecting, see notes to section 68.

"The Arbitrators shall deliver."—The arbitrators or umpire are not bound to deliver the award until their charges (if reasonable) shall have been paid to them. They have a lien at common law for reasonable charges which the statute does not take away. *Reg. v. South Devon Railway Company*, 15 Q. B. 1043.

The arbitrators' charges are, however, liable to taxation. *In re Probble and Robinson* [1892], 2 Q. B. 602.

"To the Promoters."—If the promoters refuse or neglect to take up an award, a *mandamus* will issue to compel them to do so and to deliver a copy to the claimant, and they will be bound also in doing so to pay the arbitrator's and umpire's reasonable costs. *Reg. v. South Devon Railway Company*, 15 Q. B. 1043.

And it would appear that a *mandamus* will also issue even where the promoters refuse to appoint an arbitrator, and the claimant under section 25 appoints his arbitrator to act for both. *Reg. v. West Midland Railway Company*, 10 W. R. 582.

In the return to the *mandamus* the promoters may, however, raise a question as to the claimant's right to compensation, such, for example, that the claimant had already accepted a sum in full satisfaction of his claims (*Reg. v. West Midland Railway Company*, 11 W. Rep. 857), that the claimant's interest had not been injuriously affected, and that, therefore, he had no claim to compensation (*R. v. Cambrian Railway Company*, L. R. 4 Q. B. 320), or that the proceedings ought not to have been taken under the Lands Clauses Acts. *Reg. v. London and North Western Railway Company* [1894], 2 Q. B. 512.

Sect. 35. An order to compel the promoters to take up the award may apparently be made in any division of the High Court. Such an order was made by JESSEL, M.R., in the case of *In re Harper and Great Eastern Railway Company*, 20 Eq. 39, 40. It had been previously decided (in 1853) that the Court of Chancery had no jurisdiction to order promoters to take up awards under this section. *Sutton Harbour Company v. Hitchens*, 16 Beav. 381.

The proper remedy, however, is by motion in the Queen's Bench Division for a prerogative writ of *mandamus*, and it will issue even although the only question between the parties is as to costs. *Reg. v. London and North Western Railway Company* [1894], 2 Q. B. 512, 519.

As to practice and cases on *mandamus*, see section 21, *ante*, p. 53.

Submission may be made a rule of court.

36. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

"A rule of any of the Superior Courts."—Section 1 of the Arbitration Act, 1889 (*post*), enacts that a submission, unless a contrary intention is expressed therein, shall have the same effect in all respects as if it had been made an order of court. Section 24 of that Act makes it applicable to every arbitration under any Act, except in so far as it is inconsistent with the Act regulating the arbitration. It would appear, therefore, that application is no longer necessary as the submission will have the effect of an order of court.

For the previous practice as to making a submission a rule of court, see "Russell on Arbitration," 7th ed., pp. 584, *et seq.*

Enforcing the Award.

I. Under the Arbitration Act.—Section 12 of the Arbitration Act, 1889, provides that an award on a submission may by leave of a court or a judge be enforced in the same manner as a judgment or order to the same effect. See the note thereto, *post*, for the procedure and cases under this section.

As the arbitrators have no power to settle any question as to the claimant's right to compensation, but merely the amount (see cases to section 23, *ante*, p. 57), it would appear to be doubtful to what extent this section will be applicable for the purposes of enforcing awards under the Lands Clauses Acts, especially in cases where the claimant's right to compensation is in dispute.

Section 7 enables the arbitrator to state his award in the form of a special case, so that doubtful questions of law may be decided in that manner.

II. By Action.—This was the most usual method of enforcing awards prior to the Arbitration Act, 1889, and that Act does not appear to have taken away this remedy. For a recent case where an action was brought, see *Thompson v. Tottenham and Forest Gate Railway Company*, 67 L. T. 416.

The promoters can enforce the award by depositing the amount assessed in the bank and executing a deed poll under sections 76 and 77 (*post*), whereupon the land vests in them. But if for any reason they cannot proceed in this way, the promoters may bring an action for specific performance. *Regent's Canal Company v. Ware*, 26 L.J. Ch. 566.

In order that the promoters may claim specific performance, they must have strictly complied with the provisions of the statute. *Bridgend Gas and Water Company v. Dunraven*, 31 Ch. D. 219. Sect. 36.

The owner can also bring an action for specific performance as soon as the relation of vendor and purchaser is completed by the price being ascertained. *Harding v. Metropolitan Railway Company*, 7 Ch. 154.

See cases as to specific performance collected in note to section 6, *supra*, p. 17.

The owner may also bring an action for the amount of compensation awarded, but the action for such compensation cannot be maintained until a conveyance of the land has been executed. *East London Union v. Metropolitan Railway Company*, L. R. 4 Ex. 309, following the general rule laid down in *Laird v. Price*, 7 M. & W. 474; and see *Howell v. Metropolitan District Railway Company*, 19 Ch. D. 508.

In one case an attempt was made to compel the company to complete the purchase by the landowner applying to have the company wound up; but it was held that until the title was investigated no debt was due which would constitute the landowner a creditor under section 82 of the Companies Act, 1862. *In re Milford Docks Company*, 23 Ch. D. 291.

If, however, the company agree to pay the amount within three days of the award, and that thereupon the landowner shall execute a conveyance, these are not dependent conditions, and the company must pay the money although the conveyance has not been tendered. *Lindsay v. Great London and Portsmouth Railway Company*, 1 L. M. & P. 529.

As to when interest can be recovered, see *supra*, section 6, note "Interest."

In the defence to such an action it is, of course, open to the promoters to raise any question as to the claimant's right to compensation or title to the land. See *Read v. Victoria Station Railway Company*, 32 L. J. Ex. 167; *Beckett v. Midland Railway Company*, L. R. 1 C. P. 241, for forms of declarations and pleas.

As to staying an action on an award under special provisions, see *Metropolitan Board of Works v. Salisbury*, 26 L. T. 390.

As to raising such questions on *mandamus*, see note to section 35, *supra*.

Attaching the Amount found Due.—On the same principle that an action cannot be brought for the amount until the conveyance has been executed, it has also been held that the amount cannot be attached by a garnishee order as a "debt due or accruing" under Order 45, r. 3, of the Rules of the Supreme Court, until such conveyance has been executed, as it is merely a conditional debt. Nor can it be attached by garnishee order served after the execution of the conveyance when the money has been paid into court in pursuance of a judgment of the Court in an action for specific performance by the landowner as the money is not then a debt "in the hands" of the garnishee. *Howell v. Metropolitan District Railway Company*, 19 Ch. D. 508. *A fortiori*, a notice to treat would not constitute such a debt as could be attached. *Richardson v. Elmit*, 2 C. P. D. 9.

The costs might probably be attached before the execution of the conveyance as they are due independently of the execution. *Cupell v. Great Western Railway Company*, 9 Q. B. D. 345, and see section 34, note "Recovery of the Costs."

Sect. 36. Setting Aside an Award.—See note to section 37 and section 11 of the Arbitration Act, 1889, *post*.

Remitting Award.—Section 10 of the Arbitration Act, 1889, gives the Court power to remit an award to the reconsideration of the arbitrator or umpire. See *post*, and note to section 37, *infra*.

Award
not void
through
error in
form.

37. No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form.

“Irregularity or Error in Matter of Form.”—By section 7, subsection (c), of the Arbitration Act, 1889, arbitrators and umpires are empowered to correct in an award any clerical mistake or error arising from any accidental slip or omission. See note to this section, *post*.

An award will not be invalid, because a single sum may be awarded when the claims are made under two different heads, as for the value of the land taken and damages caused by severance (*Bradshaw's Arbitration*, 12 Q. B. 362); nor when separate claims are made for the value of the land taken and for injuriously affecting other land of the same person which is not taken. *Brogden and Llynvi Valley Railway Company*, 9 C. B. (N.S.) 229.

As to the same point in the case of a verdict by a jury, see section 49, *post*.

It is more satisfactory, however, that the award should state the amount awarded for each head of compensation, for, in the event of a lump sum being awarded, and the promoters afterwards desiring to dispute the claimant's right to compensation in respect of one particular claim, they would be unable to sever this amount from the total, and the result would be that if one item was bad the whole award would be bad, and this would be a good defence to an action on the award. *Beckett v. Midland Railway Company*, L. R. 1 C. P. 241; *Duke of Buccleuch v. Metropolitan Board of Works*, L. R. 3 Ex. 306, 321; L. R. 5 Ex. 221, 227; L. R. 5 H. L. 419. Formerly the assessment would have had to be made afresh, but now the matter would probably be remitted under section 10 of the Arbitration Act, 1889. See also cases in this note, *infra*.

Where the arbitrator was to assess the sum to be paid for the purchase of certain lands and what other, if any, sum should be paid by way of compensation for the damage or injury, if any, to be sustained by reason of the severance or other injurious affecting of other lands not taken, and the arbitrator in his award merely awarded a sum in respect of the purchase of the lands taken, and the award was silent as to a severance or damage, it was held that the award was good, as the arbitrator, by his silence, negatived any right to compensation in respect of severance or other injury. *Beaufort and the Swansea Harbour Trust*, 29 L. J. C. P. 241.

The arbitrator has no power to award that the promoters do pay an amount assessed, but if he do so, the award will only be irregular in matter of form and will not vitiate the award in so far as it determines the amount of damages. *In re Harper and Great Eastern Railway Company*, 20 Eq. 39; *Lindsay v. Direct London and Portsmouth Railway Company*, 1 L. M. & P. 529.

A party to a reference cannot object to an award on the ground that a wrong assumption has been made, which, if made, would be in his favour, as, for example, a landowner cannot object that the assessment has been made on the assumption that he was owner in fee simple in possession when, in fact, he had held the land subject to a leasehold interest. *Bradshaw's Arbitration*, 12 Q. B. 562. **Sect. 37.**

In a case where the award recited that the umpire "having fully heard and maturely considered the evidence produced by the said company and the said J. Skerratt," and it appeared that there was no evidence produced by the company, but it rested entirely on Mr. Skerratt's own evidence, this was held to be merely an irregularity in matter of form under this section, and did not invalidate the award. *Skerratt v. North Staffordshire Railway Company*, 5 Ry. Ca. 166, p. 178.

In the same case, an objection was taken to the award on the ground that it did not include all the matters referred, for not only was the value of the land referred, but also what communications and archways were to be made, and the award only included the value of the land; but it was held that the two things were quite distinct, and that two awards might be made, for, in fact, the communications could not be properly ascertained at the time. *Ib.*, p. 177.

Setting Aside and Remitting Awards.—*Awards Good on the Face.*—It is a general principle of law in respect of arbitrations by consent—among which are included arbitrations under this Act (see note to section 25)—that an award cannot be set aside or remitted if it appear good upon the face of it and within the jurisdiction of the arbitrator and there has been no misconduct. The law on this subject was summed up by BLACKBURN, J., *Duke of Buccleuch v. Metropolitan Board of Works*, L. R. 5 Ex. 221, p. 232, affirmed as to this L. R. 5 H. L. 418, as follows:—"In cases where an award is good on the face of it, but the arbitrator has made a mistake either of law or of fact, if that mistake has been as to a matter within the arbitrator's authority, then, inasmuch as there is no court of appeal from the arbitrator, the mistake cannot be remedied, nor can the court, even in its exercise of its equitable jurisdiction, set aside the award, unless it can be shown that there was misconduct or some other equitable ground for interference; and in the case of the verdict of a compensation jury, inasmuch as the *certiorari* is taken away, there is no remedy at law at all unless there be excess of jurisdiction. But if the mistake has been as to the extent and nature of the arbitrator's authority, leading him to exceed it, then, inasmuch as an excess of authority by mistake is just as much an excess as if it had been in consequence of a wilful disregard of the limits of the authority, the award may be impeached as being made without jurisdiction." And see *Hodgkinson v. Fernie*, 3 C. B. (N.S.) 189; *Dias v. Blak*, L. R. 10 C. P. 388; *In re Dare Valley Railway Company*, 6 Eq. 429.

If the arbitrator admits that he has made a mistake the award will be referred back to him or set aside. *In re Dare Valley Railway Company*, 6 Eq. 429; *Flynn v. Robertson*, L. R. 4 C. P. 324; *Mills v. Bowyer's Company*, 3 K. & J. 66.

The arbitrator can also be called as a witness to discover whether he has in fact exceeded his jurisdiction, either by mistake as to the subject-matter or in point of legal principle. Questions may be put to him for the purpose of proving the proceedings before him—the course of

Sect. 37. the argument, the claims made and the claims admitted, and the history of the litigation before him up to the time when he proceeded to make his award. After that the right of asking questions ceases; the award must speak for itself. *Duke of Buccleuch v. Metropolitan Board of Works*, L. R. 5 H. L. 418; *In re Dare Valley Railway Company*, 6 Eq. 429.

If, however, there is no evidence of excess of jurisdiction or admitted mistake, the award cannot be remitted or set aside. The power to remit awards to the reconsideration of the arbitrators is now contained in section 10 of the Arbitration Act, 1889, *post*, which re-enacts in effect a similar provision in the Common Law Procedure Act, 1854, s. 8. The cases decided thereon will apply to section 10 of the Arbitration Act, 1889 (see notes thereto, *post*). The award was not sent back under the previous Act on the ground that the arbitrator had made a mistake in the legal principle, except where he admitted the mistake. *Dinn v. Blake*, L. R. 10 C. P. 388; *Hodgkinson v. Fernis*, 27 L. J. Q. P. 66.

The award could be remitted back on the ground of fresh evidence being discovered, and an award will now be remitted back on these grounds. *Barnard v. Wainwright*, 19 L. J. Q. B. 423; *In re Keighley and Bryan* [1893], 1 Q. B. 405.

In the event of any legal difficulty occurring during the arbitration, the arbitrator may either state a special case for the opinion of the court under section 19 of the Arbitration Act, 1889, or he may deliver his award in the form of a special case under section 7 of that Act. See *post*.

It is only the amount that is referred to the arbitrator, he has no power to decide as to the validity of the claim, or as to the claimant's title to compensation. See cases collected in note to section 23, *ante*, p. 57, in note "The same shall be so settled."

It is open, however, to arbitrators to find that the amount of damage sustained is *nil*. *Bradley v. Southampton Local Board*, 4 E. & B. 1014; *Reg. v. Lancaster and Preston Railway Company*, 6 Q. B. 759; *East and West India Docks v. Gaike*, 3 M. & G. 155, 171.

The court has also power to set aside the award on the ground of misconduct of the umpire, or that the award has been improperly procured (section 11 of the Arbitration Act, 1889, *post*), and in other cases the proper remedy would be to have the award remitted under section 10 of that Act.

Awards Bad on the Face.—The arbitrator in his award should recite the facts which give him jurisdiction, and should state the nature of the claimant's interest which he has been called upon to assess, and in the body of the award he should declare the value of that interest and no other, otherwise the award may be open to objection. Thus, objection was taken to an award where an arbitrator was appointed to value the plaintiff's interest in the land, and in the body thereof the value of the land itself was stated, the ground of the objection being that it did not appear that he had taken into account the damage by severance under section 63. *Barker v. North Staffordshire Railway Company*, 12 Jur. 324.

So an award was held bad where the reference was to ascertain the value of an hotel, and the damages sustained or to be sustained by reason of the execution of the works, and the award stated the compensation to be paid to the plaintiff was "for all his interest of whatever nature in the above leasehold;" the ground of the decision apparently being

that it was not clear what he had included under this latter expression. **Sect. 37.**
Wakefield v. Llandely Railway and Dock Company, 34 Beav. 245; cf.,
Bradshaw's Arbitration, 12 Q. B. 562, *supra*.

So where several persons are interested in a piece of land, and they agree to refer the valuation of their interests to arbitration, the award would be bad if it merely declared the value of the fee without apportioning the sum according to their respective interests. *North Staffordshire Railway Company v. Landor*, 17 L. J. Ex. 350.

It is important also that the submissions of the two parties should agree, for, if they differ, the award would appear to be bad. Thus in a case where the company appointed an arbitrator to assess lands that they desired to take, and the landowner appointed one to assess not only these lands but small parts which would be left, and which he gave notice to the company to take under section 93, and the award found a lump sum for both, the award was held bad, but it was not set aside apparently because of the conduct of the parties. *North Staffordshire Railway Company v. Wood*, 17 L. J. Ex. 354.

Procedure.—On applications to set aside an award on the ground that the arbitrator or umpire has misconducted himself, or that the arbitration or award has been improperly obtained under section 11, subsection (2), of the Arbitration Act, 1889, the procedure is by motion, and the time within which the motion may be made is limited by Order 64, r. 14 of the Rules of the Supreme Court. See the same set out, and the practice generally in the notes to section 11 of the Arbitration Act, 1889, *post*. Power to remit the matters referred or any of them to the reconsideration of the arbitrator or umpire is given by section 10 of the same Act, *post*. The application should be made by summons before a master.

38. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation they shall give not less than ten days' notice to the other party of their intention to cause such jury to be summoned, and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works. (a)

Promoters of the undertaking to give notice before summoning a jury.

(a) See sections 63 and 68 for the general principles of compensation. Sections 38—57 deal with assessment by juries.

"Any Case of Disputed Compensation."—The cases here referred to are those mentioned in section 21. That section deals with cases of dispute arising from the delivery of a notice to treat by the promoters, and failure to come to terms. Of the cases dealt with in section 21, excluding those over which justices have jurisdiction, it is provided by section 23 that they shall be settled by the verdict of a jury, unless the landowner desires that the amount shall be settled by arbitration, and in

Sect. 38. the event of his doing so, if the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made.

Section 68 deals with cases where lands have been taken without a notice to treat, or where they have been injuriously affected. In these cases, if the amount claimed is over 50*l.*, the owner may, if he so desire, have the amount settled by arbitration or by jury, and if they do not agree in writing to pay the amount claimed within 21 days, it must be settled in the way he desires. Section 38, however, is not applicable to proceedings under section 68; see next part of this note.

"They shall give not less than Ten Days' Notice."—When the lands "have been" taken, and the owner desires under section 68 to have the amount assessed by a jury, the promoters are not required to give this notice. The ground of this decision appears to be that section 68 in the cases there mentioned gives the initiative to the landowner, and the landowner knows that if they do not agree in writing to pay him the sum he claims, they must issue their warrant for a jury within 21 days, and as he knows this, no notice is required. *Railston v. York, Newcastle, and Berwick Railway Company*, 15 Q. B. 404.

In the case of *Richardson v. South Eastern Railway Company*, 20 L. J. C. P. 236; 21 L. J. C. P. 122, the above case was questioned, and the court were apparently of the opinion that the words, "in manner herein provided" in the 68th section, included all the previous sections, or, at least, all the applicable details before-mentioned. The question there was whether the claimant was entitled to his costs, and the Court held that he was entitled under section 51.

The case of *Railston v. York, &c., Railway Company (supra)* appears, however, to have been followed in several subsequent cases, and in *Hayward v. Metropolitan Railway Company*, 33 L. J. Q. B. 73, these cases were discussed, and followed, *Railston's Case* being followed as to no notice being necessary, and *Richardson's Case* as to section 51 being incorporated in section 68.

In *Reg. v. Smith, Re Westfield and Metropolitan Railway Companies*, 12 Q. B. D. 481, 488, the Court treated it as decided that section 38 did not apply to proceedings under section 68.

Section 38 will be applicable until possession actually has been taken, and if the promoters give a notice to treat, and afterwards proceed under section 85, and give a bond and make a deposit, but do not actually enter, the proceedings are under section 38 and not under section 68. *Reg. v. Manley Smith, Re Church and London School Board*, 67 L. T. 197; *Burkinshaw v. Birmingham and Oxford Junction Railway Company*, 15 L. T. (N.S.) 210, and see cases in note to section 68.

In questions under this section and under section 68, the landowner will be entitled to ten days' notice of the time and place of the inquiry. Section 46.

Special Jury.—If either party desire the amount assessed by a special jury, the matter shall be so tried, but the landowner or claimant, if he desire it, must give notice before the promoters issue their warrant for a jury. Section 54.

"Shall state what sum of money they are willing to give."—This is of importance in connection with the question of costs. By section 51, if the jury award the same or a less sum than the promoters

have previously offered, each party must bear his own costs. The offer must be made in the notice of their intention to summon a jury; if made after, it is too late. *R. v. Smith*, 12 Q. B. D. 481, and see this discussed in note to section 51, *post*, p. 97, "The sum previously offered." Sect. 38.

If after receiving this offer and notice the landowner expresses his desire to have the matter referred to arbitration under section 23, the offer and notice may be apparently withdrawn, and a new offer made. Whether the company has a right to withdraw the notice without such expression of desire for arbitration or without the consent of the other party is doubtful, but if they did so, and the other side did not object, apparently both offer and notice would be withdrawn. *Fitzhardinge v. Gloucester and Berkeley Canal Company*, L. R. 7 Q. B. 776, per BLACKBURN, J., at p. 782.

If the promoters make an offer before sending the notice, it is open to them to withdraw that offer and make another in the notice of their intention to summon a jury. *Hayward v. Metropolitan Railway Company*, 33 L. J. Q. B. 73. It must be made in the notice, otherwise it is of no avail. *R. v. Smith*, 67 L. T. 197.

39. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury the promoters of the undertaking shall issue their warrant to the sheriff, requiring him to summon a jury for that purpose, and such warrant shall be under the common seal of the promoters of the undertaking if they be a corporation, or if they be not a corporation, under the hands and seals of such promoters or any two of them; and if such sheriff be interested in the matter in dispute such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate, and if all the coroners of such county be so interested, such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute; and with respect to the persons last mentioned preference shall be given to one who shall have most recently served either of the said offices; and every sheriff, coroner, or ex-corer shall have power, if he think fit, to appoint a deputy or assessor. Warrant for summoning jury to be addressed to the sheriff.

"Sheriff."—See the definition in section 3 and note, *ante*, p. 8. Where any of the lands authorised to be taken are situate within the city or liberty of Westminster, then the high bailiff of the city and liberty of Westminster or his deputy shall be deemed to be sub-

Sect. 39. —stituted for the sheriff throughout these enactments dealing with the assessment of compensation for such lands by a jury. Lands Clauses Consolidation Act, 1869, s. 3, *post*.

“In every case.”—This must now be taken subject to the exception provided by section 41 of the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119) (see *post*), which provides that questions of compensation in respect of lands taken or injuriously affected by railway companies, which are to be settled by the verdict of a jury under the Lands Clauses Consolidation Act, 1845, may, on the application of either party, be tried in one of the superior courts as a judge may order.

Questions of disputed compensation under section 68 are included under this section. See notes to section 38, *supra*.

“Shall issue their warrant.”—As section 18 provides that notice shall be given to all the parties interested, each party, it would appear, is entitled to have a separate jury to assess his claim. In a case under the City Improvement Act, 1847, this principle was applied and an injunction granted restraining the city of London from proceeding to trial upon a precept according to which the claims for compensation in a house, made by the under-lessee and by under-tenants to him, would have been required to be assessed by one jury upon one trial, GIFFARD, V.C., expressing the opinion that it is the right of a person who properly makes a separate claim, to have a separate jury, a separate assessment of whatever is due to him, a separate verdict, and a separate payment, and that upon the *præcipe* in question the judge could not take that course as he must act in direct and strict accordance with the *præcipe*, and the verdict and judgment and all proceedings must follow its terms, and he can have no discretion to depart from it in any respect. *Abrahams v. Mayor of London*, L. R. 6 Eq. 625, 635.

A motion for an injunction was, however, dismissed where the precept under the same Act required the different interests of the same person in different premises to be assessed all together. *Starr v. Mayor of London*, 7 Eq. 236. See *Ecclesiastical Commissioners v. Commissioners of Sewers*, 14 Ch. D. 305, and see section 18, note “Effect of notice.”

Compelling promoters to issue their warrant.—As the delivery of a notice to treat gives the landowner the right to have the value of the land assessed and the amount paid, the promoters of an undertaking will be compelled by *mandamus* to issue a warrant to the sheriff to summon a jury under this section within a reasonable time after such notice. The procedure may be by motion for the prerogative writ or by action. *Fotherby v. Metropolitan Railway Company*, L. R. 2 C. P. 188; *Reg. v. Mayor of London*, 16 L. T. 673.

Similarly, where the special Act required six months' notice to be given to the owners of interests in lands required to be taken, and an occupier of premises had removed after receiving such notice, and in consequence thereof he was held entitled in an action to a *mandamus* to compel them to proceed and to substantial damages. *Morgan v. Metropolitan Railway Company*, L. R. 4 C. P. 97.

Where arbitration proceedings to settle the value of land had fallen through, and the landowner had given notice to the company requiring them to issue their warrant for a jury to assess the amount, it was held,

on motion for a prerogative writ, that the claimant was entitled, after refusal by the company, to a *mandamus* to compel them to issue their warrant; that it was enough to show a refusal; and that no formal notice to the company was required. *In re South Yorkshire, Doncaster, and Gole Railway Company; Ex parte Senior*, 18 L. J. Q. B. 333. Sect. 34

As to a case of refusal to grant *mandamus* prior to the Lands Clauses Act, see *Ex parte Parkes*, 9. D. P. R. 614.

Practice as to *Mandamus*.—See section 21, note “*Mandamus*.”

Form of Warrant.—See form, Appendix.

The precept or warrant must be consistent with the notice to treat and ought not to contain less or more than therein contained, except in the case where the parties have agreed the price, otherwise the promoters will be restrained from proceedings as to part of the lands. *Stone v. Commercial Railway Company*, 1 Ry. C. 375.

If they are inconsistent and the landowner nevertheless appears, and the case proceeds in the usual way, he will be held to have waived the objection. *Ex parte Cravshaw Bailey*, Bail. Ct. Cas. 66.

In issuing a warrant to a sheriff to summon a jury to assess compensation under section 68, it is not advisable that the warrant should call upon them to assess the damages, “if any,” but the verdict will not be quashed if the jury return the damages at *nil*. *Reg. v. Lancaster and Preston Railway Company*, 6 Q. B. 759.

“Promoters of the Undertaking.”—See definition, section 2, and as to being under their hands and seal, see section 6, note “To agree,” ante, p. 14. As to a question as to who were commissioners under a local Act for the purpose of summoning a jury, see *Ostler v. Cooke*, 18 Q. B. 831.

“If such sheriff be interested.”—By section 3, *supra*, unless there be something either in the subject or context repugnant to such construction, the word “sheriff” shall include under-sheriff or other legally competent deputy. It has been held, however, that, in the above expression in this section, there is something repugnant to such construction, and that, if the under-sheriff is interested as a shareholder in the company, the warrant may, nevertheless, be properly issued to the sheriff. In such a case, the under-sheriff ought not to intermeddle, but the sheriff should either take the inquisition himself or appoint a competent disinterested deputy. *Worsley v. South Devon Railway Company*, 16 Q. B. 539; *Ex parte Baddeley*, 5 R. C. 542.

If there are two sheriffs and one is interested, the precedents seem to establish the practice that the process should go to the other and not to the coroner. *Letsom v. Bickley*, 5 M. & S. 144, and cases there cited.

This provision against the interest of the sheriff was introduced for the protection of the party against whom the interest would operate, and he may waive the objection if he so elects. So that where the under-sheriff acted, but gave notice of his interest before any step was taken, and no objection was taken, the objection was held to have been waived, and a *certiorari* to bring up the proceedings refused. *Ex parte Baddeley*, 5 Ry. C. 542; and see *Corrigal v. London and Blackwall Railway Company*, 3 R. C. 411.

If the sheriff is interested (as being a shareholder), a *certiorari* will issue to bring up the inquisition, notwithstanding the provision in

Sect. 39. section 145, *post*, and notwithstanding that no damage has been occasioned in consequence. *Reg. v. London and North Western Railway Company*, 9 L. T. (N.S.) 423 ; and see *Ex parte Baddeley*, 5 Ry. C. 542.

As to the interest that will disqualify a sheriff, it must be a direct pecuniary interest and not remote or contingent, the principle being the same as that according to which a man at common law is disqualified from acting as a judge. See as to this, section 3, definition "Justice." Thus, where at the time of the summoning of a jury, and the taking of an inquisition on a warrant issued to the sheriff, the sheriff was a shareholder in a company between which company and the one issuing the warrant there was an executory contract by which the two might become amalgamated, it was held that this interest was too contingent and remote and not direct and certain, and that the proceedings were therefore valid. *Reg. v. Manchester, Sheffield and Lincolnshire Railway Company*, L. R. 2 Q. B. 336.

From the same case it would appear that if the sheriff is interested, the proceedings would be invalid, although the under-sheriff acted and the sheriff did not interfere at all.

If, in the case of local improvements, the sheriff is a ratepayer and liable to be rated in respect of the same, this is sufficient interest to disqualify him, unless there is a proviso in the special Act that he is not thereby to be disabled. To show mere opportunity of knowledge will not be sufficient to prove that the interest has been waived. *Reg. v. Sheriff of Warwickshire and Corporation of Birmingham*, 3 W. R. 164.

"To appoint a deputy."—The sheriff may also appoint a deputy according to the definition in section 3, *supra*, p. 5.

The deputy should continue to hold the inquiry although his principal may be present during part of it, and he should sign it in the name of his principal, and may add "by ———, his deputy." *Reg. v. Perkin*, 7 Q. B. 165 ; *Stroud v. Watts*, 3 D. & L. 799.

Provisions
applicable
to sheriff
to apply to
coroner.

40. Throughout the enactments contained in this Act relating to the reference of a jury, where the term "sheriff" is used, the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place, and in every case in which any such warrant shall have been directed to any other person than the sheriff, such sheriff shall, immediately on receiving notice of the delivery of the warrant, deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person appointed by him to receive the same the jurors book and special jurors list belonging to the county where the lands in question shall be situate.

"Sheriff."—See definition, section 3 and note.

The enactments referred to are more particularly sections 41—45, 47—50, and 57, and, as to special juries, sections 54 and 55.

"Coroner or other person."—As to when the coroner may act, and as to what other persons may act, see section 39, *supra*.

41. Upon the receipt of such warrant the sheriff shall **Sect. 41.**
 summon a jury of twenty-four indifferent persons, duly **Jury to be**
 qualified to act as common jurymen in the superior courts, **sum-**
 to meet at a convenient time and place to be appointed by **moned.**
 him for that purpose, such time not being less than fourteen
 nor more than twenty-one days after the receipt of such
 warrant, and such place not being more than eight miles
 distant from the lands in question, unless by consent of the
 parties interested, and he shall forthwith give notice to the
 promoters of the works of the time and place so appointed by
 him.

"Such Warrant" is the warrant which by section 39 the promoters are required to issue.

"Sheriff," or other person acting, sections 39 and 40.

"Shall summon."—If the warrant has been properly issued to the sheriff, he must summon the jury and proceed, and if he refuse, a *mandamus* will issue ordering him to proceed. *Walker v. London and Blackwall Railway Company*, 3 Q. B. 74. In that case the sheriff having summoned a jury refused to proceed on the ground that he was of opinion that the precept did not authorise him to take their verdict.

If the sheriff make default in any of the matters required to be done by him, he is liable under section 44, *post*, p. 92, to a penalty of 50*l*.

Postponement.—In a case under a local improvement Act where the precept issued to the recorder as judge of the mayor's court to summon a jury for a day named, and he at the request of the landowner postponed the execution of the precept, the company applied for a *mandamus* to compel him to proceed, or in the alternative for a *certiorari* to bring up his order for postponement to be quashed. It was held that the recorder had no power to postpone the proceedings, and the *certiorari* was granted as the proper remedy. It proved, however, a futile remedy in this case, as the order could not be brought up and quashed until after the date to which the proceedings were postponed had passed. *Galloway v. Corporation of London*, 12 Jur. (N.S.) 182.

Verdict of jury set aside.—Where the verdict of a jury has been set aside by a superior court, it is the duty of the sheriff to proceed under the old warrant, and to summon a fresh jury. The claimant ought not to give a fresh notice, and the promoters are not required to issue a new warrant. *Horrocks v. Metropolitan Railway Company*, 19 C. B. (N.S.) 139. In the case of a railway company, the claimant cannot apply after the verdict has been set aside to a judge of the High Court, to have the case tried in the High Court, under the Railways Regulation Act, 1868. *Tesser v. Swindon Railway Company*, 45 L. T. 209.

"Common Jurymen in the Superior Courts."—This is regulated by many statutes, of which the principal are 6 Geo. 4, c. 50, and the Juries Act, 1870 (33 & 34 Vict. c. 77).

Sect. 41. If the jurymen are disqualified they may be objected to by challenge as provided in section 42, *infra*, and the Court will not set aside a verdict on the ground that some of the jurymen were not qualified if they have not been challenged. *In re Chelsea Waterworks Company, Ex parte Phillips*, 10 Ex. 731.

If a juror so summoned does not appear he is liable to a penalty of 10*l.*, unless he can show reasonable excuse. Section 44, *infra*.

"Give notice to the Promoters."—The promoters must then give ten days' notice to the other party by section 46.

Jury to be
impan-
nelled.

42. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issues joined in the superior courts are by law required to be drawn, and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array.

"Are by law required to be drawn."—See 6 Geo. 4, c. 60, and 33 & 34 Vict. c. 77.

"Duly qualified as aforesaid," as provided in section 41.

"Of the bystanders."—These are called talesmen and may be challenged as the others. 6 Geo. 4, c. 60.

"Their lawful challenges."—These are challenges of the individuals, called challenges of the polls as distinguished from challenges to the array. Sir E. Coke reduced the grounds of challenge to four:—

1. *Propter honoris respectum*, *e.g.*, a peer of Parliament who may be challenged by either party, or may excuse himself.
2. *Propter defectum*, for defect of birth, if the person is an alien, not domiciled or naturalised; defect of sex, as no female can serve; defect of estate or qualification, as to age and property.
3. *Propter affectum*, for suspicion of bias or partiality such as relationship or interest.
4. *Propter delictum*, for conviction of some crime. (See 3 "Stephen's Commentaries," 11th edit., p. 561, *et seq.*, and 6 Geo. 4, c. 60, ss. 27, 29 and 50; 7 & 8 Geo. 4, c. 28, s. 3.)

If the jurymen are not qualified, this point cannot be raised after verdict, if they have not been challenged as herein provided. *In re Phillips and Chelsea Waterworks Company*, 10 Exch. 731.

In a case where twelve jurymen were chosen to assess, and one took ill before any hearing had taken place, and another was chosen to take his place, and duly sworn and not challenged, although objection was taken, the Court refused to allow this objection to be raised by the promoters in an action by the landowner to recover the amount of the verdict. *Cooling v. Great Northern Railway Company*, 15 Q. B. 486. Sect. 42.

"Shall challenge the array."—That is a challenge of all the jurors appearing collectively, on account of some partiality or default of the sheriff.

43. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law; and if either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question, and on the like request the sheriff shall order the jury, or any six or more of them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the superior courts. Sheriff to preside, witnesses to be summoned.

The Sheriff, or the other persons referred to in sections 3, 39, and 40 of this Act, and section 3 of the Lands Clauses Consolidation Act, 1869, and see the notes to these sections.

In a case prior to the Lands Clauses Act, 1869, where the deputy high bailiff of Westminster presided, and the case was conducted before him without objection, one of the parties applied for a *certiorari* to have the verdict quashed for want of jurisdiction; but the Court refused to assist the applicants by this remedy. *Emanuel Hospital v. Metropolitan District Railway Company*, 19 L. T. 692.

"All such rights and privileges."—The sheriff must act in direct and strict accordance with the warrant, and the verdict and all proceedings must follow its terms, and he has no discretion to depart from it in any respect. *Abrahams v. Mayor of London*, 6 Eq. 625, 635; and see note to section 18, "Effect of notice," and section 39, note, "Shall issue their warrant."

The jury must be sworn before they proceed to the enquiry. Section 48 and note.

Under a similar provision in a local Act, it was contended that the rights and privileges there spoken of, included a right to costs, but it was held that these words were clearly intended not for this purpose but to regulate the general course of proceedings, to remove doubts concerning the right to begin, and to show in other respects how the inquisition should be conducted. *Rex v. Gardner*, 6 Ad. & E. 112, 117. The same point was raised on similar words in another local Act and the above case was followed. *Reg. v. Sheriff of Warwickshire*, 2 Ry. C. 661.

Sect. 43. “**As a witness.**”—By section 45, *infra*, any person summoned as a witness, who does not attend, is liable to a penalty of 10*l.*, but his reasonable expenses must have been tendered to him.

“**View.**”—In the High Court this is regulated by the Rules of Supreme Court, Order 50, rr. 3 and 5. By these the court or a judge has power upon the application of any party to a cause or matter, and upon such terms as may be just, to make any order for the inspection by a jury of any property or thing being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid to authorise any persons to enter upon or into any land or building in the possession of any party to such cause or matter.

Penalty on
sheriff and
jury for
default.

44. If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit fifty pounds for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the superior courts; and if any person summoned and returned upon any jury under this or the special Act, whether common or special, do not appear, or if appearing, he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding ten pounds, and every such penalty payable by a sheriff or juryman shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and, in addition to the penalty hereby imposed, every such juryman shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of an issue joined in any of the superior courts.

“*In the matters hereinbefore required to be done by him.*”—These are the matters mentioned in sections 40—43.

“**Shall be recoverable.**”—By section 136, *infra*, penalties under this Act are recoverable by summary procedure before justices. The case of the sheriff is by this section excepted, and the procedure against him is by action.

“**Regulations, pains, and penalties.**”—As to regulations, see 17 & 18 Vict. c. 125, s. 59; 33 & 34 Vict. c. 77, s. 31. As to fines, see 6 Geo. 4, c. 50, ss. 38, 51, 53, 54.

45. If any person duly summoned to give evidence upon **Sect. 45.** any such inquiry, and to whom a tender of his reasonable **Penalty on** expenses shall have been made, fail to appear at the time and **witnesses** place specified in the summons without sufficient cause, or if **making** any person, whether summoned or not, who shall appear as a **default.** witness refuse to be examined on oath touching the subject matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds.

"Duly summoned," i.e., summoned by the sheriff as provided in section 43, *supra*.

"To be examined on oath" or affirmation in the cases provided for by the Oaths Act, 1888. See as to this, note "Oath" to section 32, *supra*, p. 71.

46. Not less than ten days' notice of the time and place **Notice of** of the inquiry shall be given in writing by the promoters of **inquiry.** the undertaking to the other party.

"Ten days' notice."—By section 41, the sheriff fixes the time and place within the limits there mentioned, and gives notice thereof to the promoters; the promoters by this section give notice to the other party.

In a Scotch case under a similar enactment in the Lands Clauses Consolidation (Scotland) Act, 1845, it was held that the provision was imperative and not merely directory, and applied to special as well as common juries, but that it might be waived by the party for whose benefit it was enacted, and that such waiver may be inferred from his conduct, as when he attended before the sheriff and agreed to the fixing of the day. *Lang v. Glasgow Court House Commissioners*, 9 Ct. of Sess. Cas., 3rd series, 1871.

In cases where the compensation is required to be assessed by a jury under section 68, the limit of time within which they can make an offer to save them from having to pay the costs of the claimant under section 51, is at the time of giving notice under this section. See section 38, note, "They shall give not less than ten days' notice," and section 51, note.

47. If the party claiming compensation shall not appear **If the** at the time appointed for the inquiry such inquiry shall not **party** be further proceeded in, but the compensation to be paid shall **make de-** be such as shall be ascertained by a surveyor appointed by **fault the** two justices in manner hereinafter provided. **inquiry not** **to proceed.**

"Shall not appear," i.e., after due notice to him for that purpose provided by section 46, and see section 59,

Sect. 47. "Two justices."—See definition, section 3.

"In manner hereinafter provided," *i.e.*, in sections 59—63.

Jury to be sworn.

48. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage, and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence.

"Oaths" or affirmation in the cases when affirmations may be made instead of an oath taken. See the Oaths Act, 1888, and note "Affirmation," to section 32, *supra*, p. 71.

Sums to be paid for purchase of lands and for damage to be assessed separately.

49. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which, under the provisions herein contained, he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

Principles upon which value and compensation to be assessed.—The cases upon these, when land has been or is to be taken, are collected in the notes to section 63, and the cases when lands are injuriously affected without land held therewith being taken, are collected in the notes to section 68. By section 63 it is provided that justices, arbitrators, and surveyors in assessing compensation shall have regard to the same matters, as the jury under section 49. Although the words in the two sections are slightly different there can be no doubt that the legislature intended that the same measure of compensation should exist in all cases whether determined by arbitrators, justices, surveyors, or juries. *Holt v. Gas Light and Coke Company*, L. R. 7 Q. B. 728, 736. The assessors of compensation mentioned in section 63 are not, however, required thereby to deliver separate assessments. See *In re Bradshaw's Arbitration*, 12 Q. B. 562, 572.

"Shall deliver their verdict separately."—If the jury do not give their verdict separately the proceedings will not necessarily be void. In two cases under similar provisions in special Acts prior to the Lands Clauses Acts, such words were held not to be in the nature of a condition but to be directory only, so that the company or the claimant might have called upon the jury to give separate verdicts for the value of the lands and for the damage, but if neither party call upon the jury to do so at the time, they cannot afterwards treat the verdict as a nullity and obtain a *writ of mandamus* to compel the sheriff to summon a new jury, &c., nor can the company plead it as an answer to an action upon the verdict. *In re London and Greenwich Railway Company*, 2 A. & E. 678; *Corrigal v. London and Blackwall Railway Company*, 5 M. & G. 219, 249. **Sect. 49.**

In a case where a jury was summoned to assess the value of a lease and damages by severance and otherwise, and a verdict for a lump sum was agreed by counsel to be taken by consent, such verdict was held to be an assessment of the claim, and to include both the value of the interest and damage by severance and loss of trade. *Re North London Railway Company, Ex parte Hayne*, 12 L. T. (N.S.) 200.

Jurisdiction of jury.—See note to section 50 under same heading.

50. The sheriff before whom such inquiry shall be held shall give judgment for the purchase-money or compensation assessed by such jury, and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase-money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records, and the same or true copies thereof shall be good evidence in all courts and elsewhere, and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies. **Verdict and judgment to be recorded.**

Sheriff.—See definition, sections 3 and 40.

Jurisdiction of Sheriff and Jury.—Title.—The jurisdiction of a sheriff and jury is confined, as in the case of justices and arbitrators, to settling the amount only, and they cannot determine the claimant's interest or his title to the amount assessed. *R. v. London and North Western Railway Company*, 3 E. & B. 443; *Cooper v. North London*

Sect. 50. *Railway Company*, 34 L. J. Ch. 373; *Brandon v. Brandon*, 34 L. J. Ch. 333; and see cases collected in section 23, note "The same shall be so settled."

Where a jury is summoned to assess the amount claimed by a party, the promoters are not precluded thereby from subsequently questioning the right of the claimant to any compensation, whether the claim is made under section 68 (*East and West India Docks v. Gatlif*, 3 Mac. & G. 155; *Read v. Victoria Railway Company*, 32 L. J. Ex. 167; *Chapman v. Monmouthshire Railway and Canal Company*, 2 H. & N. 267), or for an interest in land taken. *Cooper v. North London Railway Company*, 34 L. J. Ch. 373. Where counsel by consent agree to a verdict for a lump sum for the interest taken, and for damages, that does not preclude the promoters from afterwards disputing the claimant's title. *Re Hayne*, 12 L. T. (N.S.) 200. Nor does a proviso in the special Act that the finding shall be conclusive prevent the promoters from afterwards raising the question of the claimant's title. *Barker v. Nottingham, &c., Canal Company*, 15 C. B. (N.S.) 726.

In a case where a jury enquired into the claimant's title to a right of way, and found that the right did not exist, but assessed compensation on the assumption that it did not exist, the whole verdict and judgment were considered bad and quashed. *Reg. v. London and North Western Railway Company*, 3 E. & B. 443.

Similarly, where the claimant claimed damages for loss of support to premises and consequent cracking, and the jury found that the premises were new, and the land would have sunk if the buildings had not been there, and, therefore, found that the claimant was entitled to no compensation, and assessed no damage for the cracks, the verdict was held bad. See *Horrocks v. Metropolitan Railway Company*, 4 B. & S. 315. It is open to the jury, however, to find that no damage has been done, and, therefore, find no amount due, and this would appear to be the proper finding, instead of finding, say, a farthing due. Nominal damages ought not to be awarded. *Reg. v. Lancaster and Preston Railway Company*, 6 Q. B. 759.

Collateral Matters.—The jury can only find a sum of money, and cannot order anything to be done, as, for example, to direct the promoters to erect a fence. In a case where they did so, the verdict was not set aside as it did not appear that less money was awarded on that account. *Reg. v. South Holland Drainage Trustees*, 8 A. & E. 429. But the verdict of a jury was quashed where it awarded beyond the value of the land a sum apparently for the purposes of building a bridge to join the severed portions of the owner's land. *Reg. v. South Wales Railway Company*, 13 Q. B. 988; cf., *In re Byles and the Ipswich Dock Commissioners* and note to section 23.

If the parties consent any other inquiry may be made by the jury when it is a special one. Section 56.

Wrong principle of compensation.—If the jury proceed on a wrong principle of compensation, and award compensation for matters which are not the subject of compensation, this will also be excess of jurisdiction, and the verdict may be set aside unless the part that is bad can be separated from the others. *Caledonian Railway v. Ogilvy*, 2 Macq. 229; *Reg. v. Scard*, 10 Times L. R. 545; *Re Penny*, 7 E. & B. 660.

Interest.—The jury have not power to award interest if the claimant has left his claim unascertained for years, and the promoters have been ready and willing to meet the demand. *Caledonian Railway Company v. Carmichael*, L. R. 2 H. L. (Sc.) 56. **Sect. 50.**

Setting aside or varying the verdict.—If the sheriff and jury act within their jurisdiction the judgment cannot be set aside or varied. If they act in excess of their jurisdiction it can be set aside or varied.

When it cannot be set aside.—Section 145 of this Act expressly takes away the right of removing any proceeding into the High Courts by *certiorari* or otherwise, and it also provides that no proceeding shall be quashed or varied for want of form. That section does not take away the right of the High Court to grant a *certiorari*, but a writ of *certiorari* can only issue where the jurisdiction has been exceeded. *Cowper Essex v. Local Board for Acton*, 14 App. Cas. 153, p. 160.

The verdict cannot be set aside, although there has been misdirection, improper rejection of evidence, or perverseness in the finding, as it could be in a trial at *nisi prius*. *Reg. v. Eastern Counties Railway Company*, 3 R. C. 466, and *Reg. v. London and North Western Railway Company*, 3 E. & B. 443, p. 475.

And the court has no power to grant a new trial of an issue directed under section 41 of the Regulation of Railways Act, 1868. *Birmingham Land Company v. London and North Western Railway Company*, 22 Q. B. D. 435.

Nor was the verdict set aside for irregularity in the proceedings where there was an omission to strike the special jury in sufficient time to allow three days for summoning them, in consequence of which only eight appeared and assessed the compensation. *Ex parte The Great Western Railway Company; Re Sheriff of Gloucester*, 18 L. T. (o.s.) 92.

Or varied.—The amount cannot afterwards be varied if the jury have acted within their jurisdiction. If there are materials upon which a jury are entitled to award damages, a higher court cannot review their finding, nor can it be said that their jurisdiction is gone because the jury may have awarded too much, or because the sheriff may have over-stated or under-stated the result of the evidence given. *Cowper Essex v. Local Board for Acton*, 14 App. Cas. 153, 160, 168; *Streatham Estates Company v. Commissioners of Public Works*, 52 J. P. 615.

Nor can the company allege in an action on the verdict that the claimant is only entitled to a sum not exceeding 50*l.*, as such a plea could only be good where the compensation claimed was under that sum. *Road v. Victoria Station and Pimlico Railway Company*, 1 H. & C. 826.

When it can be set aside.—If the sheriff be an interested party the verdict can be set aside, because then he has no jurisdiction (*R. v. London and North Western Railway Company*, 12 W. R. 208), and if the jury act in excess of their jurisdiction it can also be set aside, and the proper remedy in either of these cases is, notwithstanding section 145, to have the judgment removed by writ of *certiorari* into a superior court and quashed. *R. v. South Wales Railway Company*, 13 Q. B. 988. In *Re Penny and South Eastern Railway Company*, 7 E. & B. 660, and cases cited in the notes to section 145.

Sect. 50. After the sheriff has delivered judgment and signed it as required, he would appear to be *functus officio*, and a prohibition will not lie to prevent the judgment being recorded. *Chabot v. Lord Morpeth*, 12 Q. B. 446.

(As to the principles guiding the Courts in setting aside awards under this Act, see section 37, p. 81, note, "Setting aside and remitting awards.")

In the case of *Reg. v. Sheward*, 9 Q. B. D. 741, BRAMWELL, L.J., expressed a doubt as to whether the Court had jurisdiction to quash an inquisition which was good upon the face of it. This point was referred to in *Mortimer v. South Wales Railway Company*, 1 E. & E. 375, where it was held that if the inquisition is good on the face of it no plea of excess of jurisdiction can be allowed in an action on it. It was suggested that the proper remedy was "*certiorari*," which, however, was refused in that case (p. 382). But the point was discussed in *Penny v. South Eastern Railway Company*, 7 E. & B. 660, where it was held that where a jury have taken into consideration in awarding compensation one claim among others as to which they have no jurisdiction a *certiorari* will lie, although such excess of jurisdiction does not appear on the face of the proceedings; the excess may be shown by affidavit.

Sufficient ought to appear on the face of the proceedings themselves to show that jurisdiction exists; otherwise they may be void. No particular form is necessary, and it is sufficient if the jurisdiction is made substantially apparent upon the face of the documents upon a reasonable construction, and if the warrant and inquisition be annexed together, any deficiency in the one may be aided by reference to the other. *Taylor v. Clemson*, 2 Q. B. 978; *affd. H. of Lords*; 11 Cl. & F. 610; and *Ostler v. Cooke*, 13 Q. B. 143.

Where the sheriff exceeds his jurisdiction and the parties do not make any objection they are not thereby estopped from afterwards objecting to the want of jurisdiction, as it is the duty of the Court itself to see whether it has jurisdiction or not. *Caledonian Railway Company v. Ogilvy*, 2 Macq. H. L. Ca. 229.

And Varied.—In that last case the jury had awarded a lump sum for severance and for damage caused by a level crossing. The House of Lords being of opinion that no damages could be rightly claimed for the level crossing set aside the verdict, but had it been possible to sever the amounts the Court stated that they would have corrected the verdict. And see also *Reg. v. Scard*, 10 Times L. R. 545.

Time to Apply.—In order, however, to succeed on an application for a *certiorari*, proceedings should be taken at once. It is discretionary in the Court to grant a *certiorari* or not, and the Divisional Court in one case laid it down as a rule of practice that a *certiorari* ought not to be granted for the purpose of quashing an inquisition taken under the Lands Clauses Acts after the expiration of the time allowed for setting aside an award made under the powers of the same Act. *Reg. v. Sheward*, 5 Q. B. D. 179; *affd. on appeal*, 9 Q. B. D. 741. As to the time for setting aside an award see Order 64, rule 14, of the Rules of the Supreme Court; and notes to section 11 of the Arbitration Act, 1889, *post*.

Enforcing Verdict and Judgment.—The ordinary remedy for enforcing a verdict and judgment is by action. After the price is fixed

either party can sue for specific performance, and after the conveyance has been executed the landowner can sue for the price. It is subject to the same rules as enforcing an award by action. See cases to section 36, note "By action," p. 78; and note "Attaching the amount found due," p. 79. Sect. 50.

In the earlier cases prior to the Lands Clauses Act, 1845, the inquisition was enforced by *mandamus* (*R. v. Nottingham Old Waterworks Company*, 6 A. & E. 355; *R. v. Swansea Harbour Trustees*, 8 A. & E. 439; *R. v. Great Western Railway Company*, 6 Q. B., p. 72, n.), but it has been held that an action lies, and is a not less effectual remedy than a *mandamus*, so that, therefore, a *mandamus* will not now be granted. *Reg. v. Hull and Selby Railway Company*, 6 Q. B. 70.

As the promoters are not precluded by the finding from disputing the claimant's interest in the land, or his legal right to compensation, and that the damage suffered is not in its nature actionable, these pleas can always be raised in the defence to any action on the verdict and judgment. *Read v. Victoria Station and Pimlico Railway Company*, 1 H. & C. 826; *Barber v. Nottingham, &c., Railway and Canal Company*, 15 C. B. (N.S.) 726; and cases cited in note above "Jurisdiction of Sheriff and Jury," p. 95.

But if the inquisition is good on the face of it, it is no defence to an action on the verdict and judgment that there has been excess of jurisdiction. If there has been such excess of jurisdiction the proper course is to apply for a *certiorari* to have the judgment set aside. When an action is brought on a judgment following an inquisition, the Court cannot enter into the consideration of the particular items, as that would be reopening the inquiry. *Mortimer v. South Wales Railway Company*, 1 E. & E. 375; *Corrigal v. London and Blackwall Railway Company*, 5 M. & Gr. 219, 248.

If the jury have any jurisdiction, and if any evidence is placed before the jury which warrants the finding of any damages, then in an action to recover the amount so found, the plaintiff must recover, however excessive the amount of damages, however erroneous the law laid down to the jury, however wrong the principle they adopted. Per Lord HERSCHELL, *Metropolitan Board of Works v. Howard*, 5 Times L. R. 732.

Pleas, however, to the effect that the claimant had not followed the regulations laid down by the statute, as to giving notices, or as to stating his interest would be valid (*Healey v. Thames Valley Railway Company*, 5 B. & S. 769; *Eastham v. Blackburn Railway Company*, 9 Ex. 768), unless waived by the subsequent conduct of the promoters as if, notwithstanding the insufficiency of the notice, they proceed to arbitration. *Loeving v. City of London and Southend Subway Company*, 7 Times L. R. 600.

Costs.—See section 51, and notes.

"Shall be kept . . . among the records."—Under a similar provision in another Act it was stated that the recording of the verdict and judgment as directed is not made a condition precedent to their validity, and that the provision seemed only intended for safe custody and facility of proof. *Chabot v. Lord Morpeth*, 15 Q. B. 446, p. 458.

Sect. 50. “Copies thereof shall be good evidence.”—In a case under a previous Act containing a similar proviso, where it appeared that the verdict had never been recorded as directed, the under sheriff who presided was called as a witness to prove the verdict, and his evidence was received. *Manning v. Eastern Counties Railway Company*, 12 M. & W. 237, p. 243.

Like all other public records of a judicial nature, these records may be proved by an examined copy as well as by the certified copy mentioned in the section. An examined copy is a copy sworn to be a true copy by a witness who has compared it line for line with the original, or who has examined the copy while another person reads the original.

Costs of
the
inquiry,
how to be
borne.

51. On every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one half of the cost of summoning, impannelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.

Compare a similar provision in the matter of costs of an arbitration, section 34.

“On every Such Inquiry.”—This refers to inquiries pursuant to section 68 as well as to those where notice of treat has been given. *Richardson v. South Eastern Railway Company*, 20 L. J. C. P. 236; 21 L. J. C. P. 122; *Hayward v. Metropolitan Railway Company*, 33 L. J. Q. B. 73.

It does not, however, include inquiries made under section 94, which provides for the assessing of the value of small portions of severed land, on the ground that a previous offer of the promoters in such a case would not prevent the inquiry, and no special provision is there made as to costs. *Cobb v. Mid Wales Railway Company*, L. R. 1 Q. B. 42.

“The sum previously offered.”—These words refer to the offer which must be made under section 38 in cases where the inquisition by a jury takes place as the consequence of a delivery of a notice to treat.

That section requires the promoters to give a ten days' notice of their intention to have a jury summoned, and in that notice to state what sum they are willing to give. If they make an offer after that date, such later offer, although the same or greater than the amount found by the jury, will not disentitle the landowner to have his costs paid by the promoters. *Pearson v. Great Northern Railway Company*, L. R. 7 Q. B. 785, in note to *Fitzhardinge v. Gloucester and Berkeley Canal Company*, L. R. 7 Q. B. 776, a case under section 34. If an offer is made in the notice and a larger one made later, and the amount found is greater than the first but less than the second, the landowner will still be entitled to his costs, although the promoters do not issue their warrant to summons a jury until ten days after the second notice. *Reg. v. Smith; Re Westfield v. Metropolitan Railway Company*, 12 Q. B. D. 481.

In that case COLERIDGE, L.C.J., stated that he was disposed to think that "if the notice of intention to cause a jury to be summoned, coupled with the offer of the sum the promoters were willing to give, were formally withdrawn and another notice were given not less than ten days before the summoning of the jury, and another offer of a larger sum substituted in that notice, it would be a good offer under section 38, and one upon which the promoters could rely with respect to the question of costs. S. C., p. 487, and cf. per BLACKBURN, J., in *Fitzhardinge v. Gloucester and Berkeley Canal Company*, L. R. 7 Q. B. 776, at p. 782, and see note to section 34, p. 75.

The offer must be made in the notice that the promoters intend to issue their warrant. If it be made before and not repeated in that notice, this is apparently not a strict compliance with the statute, and although the jury award a less sum than that offered the landowner will, nevertheless, be entitled to his costs of the inquiry. *Reg. v. Smith; Re Church and London School Board*, 67 L. T. 197.

Section 38 will continue to apply, although the promoters proceed to take possession under section 85 and give the bond thereby required until they actually take physical possession, and then section 68 will apply. S. C.

Under section 68.—This section extends to enquiries pursuant to section 68, but, as it has been held that the notice mentioned in section 38 need not be given before summoning the jury (*Richardson v. South Eastern Railway Company*, 20 L. J. C. P. 236; *Railston v. York, Newcastle, and Berwick Railway Company*, 15 Q. B. 404, and see cases cited in section 38, note, "They shall not give less than ten days' notice," p. 84), it became necessary for the Courts to fix some date before which the offer referred to in this section must be made. It was finally decided that the limit must be at the date of sending the ten days' notice, which the promoters must give of the date fixed for the inquiry, as provided in section 46. *Hayward v. Metropolitan Railway Company*, 33 L. J. Q. B. 73; *Metropolitan Railway Company v. Turnham*, 14 C. B. (N.S.) 212; *Reg. v. Smith; Re Church and London School Board*, 67 L. T. 197.

The promoters may, therefore, withdraw their offer, and increase it, or otherwise alter it, up to the time above mentioned. *Hayward v. Metropolitan Railway Company*, *supra*.

In cases under section 68 the claimant is entitled to no costs if he has no proper claim to compensation, and it does not matter whether the promoters make a previous offer or not. *Todd v. Metropolitan Railway Company*, 19 W. R. 720; *Sharpe v. Metropolitan District Railway Com-*

Sect. 51.

Sect. 51. *pany*, 4 Q. B. D.; cf. *Capell v. Great Western Railway Company*, 9 Q. B. D. 469.

"The same or a less sum than shall have been offered."—See cases under same heading in note to section 34, p. 74.

Neither jury nor arbitrators have power to enquire as to what sum was previously offered. *Gould v. Staffordshire Potteries Waterworks Company*, 6 R. C. 568, p. 575.

"All the costs."—As to what is included, see section 52, *infra*, and note, "The costs," and see also section 34, note, "And incident thereto."

Recovery of the costs.—As to this, see section 53 and notes, and also section 34, note, under same heading, p. 76.

Particulars of the costs.

52. The costs of any such inquiry shall, in case of difference, be settled by one of the Masters of the Court of Queen's Bench of *England or Ireland*, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attornies, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

A somewhat similar proviso in case of arbitrations under this Act has been made by section 1 of the Lands Clauses Consolidation Act, 1869. See *post*.

The costs.—As to how they are to be borne, see section 51, and as to the promoters deducting the amount from the sum found due, section 53.

When the verdict is for the same or a less sum than that previously offered, the Master will only be required to tax the costs of summoning, impannelling, and returning the jury, and of taking the enquiry and recording the verdict and judgment. The promoters are not entitled to half the costs of witnesses and counsel, but only half the formal costs. *Bray v. South Eastern Railway Company*, 7 D. & L. Practice Cas. 307.

In a case where the verdict of a jury was quashed by reason of a wrong view of the law being taken by the under-sheriff, in consequence of which a second inquiry had to be held, in which the jury awarded a greater sum than had been offered, it was held that the claimant was entitled to his costs, not only of the successful inquiry, but also of the first one and of the proceedings to set it aside. *Reg. v. Manley Smith*, 30 W. R. 272; S. C. *sub. nom. Reg. v. North London Railway Company*, 51 L. J. Q. B. 51. But in a case under a local Act prior to the Lands Clauses Act, 1845, where the sheriff having gone wrong, the landowner applied for and obtained a *mandamus* to set aside the inquisition, he was held not to be entitled to the costs of the proceedings to set aside on the ground that it was the mistake of the sheriff and not of the company. *Walker v. London and Blackwall Railway Company*, 7 Jur. 1154.

The costs will not include the expenses of preliminary negotiations, of **Sect. 52.** surveying, or of plans by surveyors not called at the inquisition. These questions were decided in cases under special Acts prior to the Lands Clauses Acts, but in similar terms. In *Reg. v. Sheriff of Warwickshire* [1841], 2 R. C. 661, it was held that sections giving the landowner "the costs of summoning such jury and the expenses of witnesses" did not entitle the claimant to the costs of the attorney's letters, nor attendances, nor to the expenses of surveyors not called as witnesses. Where the words of the statute included the costs "also of the inquest" the owner was held entitled to the attendance of the attorney, conferences, and counsel, but the expenses of surveyors merely as such were not allowed, unless they had been called as witnesses. *R. v. JJ. of York*, 1 A. & E. 828.

Where there was no direction in the Act as to costs, none were allowed. *Ex parte Turner*, 1 W. W. & H. 305; *Corrigall v. London and Blackwall Railway Company*, 5 M. & G. 219; *R. v. Gardner*, 6 A. & E. 112; and *In re Laws*, 1 Ex. 441—a case under the National Defence Act (5 & 6 Vict. c. 94).

See section 34 for a proviso similar to that in section 51 as to costs of an arbitration.

Reviewing taxation.—The Court has no power to review a taxation by the Master under this section. The ground for this decision is that the power to review taxation arises only in proceedings before the Court, and because the Court has the power of taxing which office it delegates to the taxing Masters. In cases under this section the authority has been conferred on the Master as a *persona designata*, and no jurisdiction is given to the Court to review. *Owen v. London and North Western Railway Company*, L. R. 3 Q. B. 54; approving *Ross v. York, Newcastle, and Berwick Railway Company*, 18 L. J. Q. B. 199, and *Tennant v. Borough of Belfast*, 11 Ir. L. R. 290, but not following *Metropolitan Railway Company v. Turnham*, 32 L. J. M. C. 294; and *Re Sheffield Waterworks Act*, L. R. 1 Ex. 54.

The principle laid down in *Owen's* case was approved by the Court of Appeal in *Sandback Trustees v. North Staffordshire Railway Company*, 3 Q. B. D. 1, a case under section 1 of the Lands Clauses Consolidation Act, 1869.

If the Master refuse to exercise jurisdiction, or wrongfully exercise his jurisdiction, the Court can interfere by *mandamus* or *certiorari*. *Owen's* case, *supra*, and cases cited to section 1 of the Lands Clauses Consolidation Act, 1869, *post*, and *Reg. v. Smith*, 67 L. T. 197; *Reg. v. Manley Smith*, 30 W. R. 272.

Costs may also be taxed under section 83 of the Lands Clauses Act, 1845, but in that case the taxation can be reviewed, as the taxation thereunder can only be done by order of Court.

53. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands or of any interest therein, the same may be deducted and

Payment
of costs.

Sect. 53. retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provision hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

"Any such Costs."—These, no doubt, refer to the costs mentioned in sections 51 and 52. There is no similar provision as regards recovering the costs of an arbitration.

"Any Justice."—This means any justice as defined by section 3; see note thereto, "Justices," p. 9.

A justice acting under this section will be for this purpose a court of summary jurisdiction within the definition in the Interpretation Act, 1889, s. 13, sub-sect. (11). See section 24, note, p. 60. It follows, therefore, that the provisions in the Summary Jurisdiction Acts dealing with warrants of distress will, so far as they are applicable, apply to distress warrants under this section. The more important are—section 39, sub-section (4) and section 43, sub-sections (1), (8), of the Summary Jurisdiction Act, 1879, dealing respectively with illegal execution and the procedure in executing distress warrants.

"Shall issue his warrant."—The allocation of the Master is final as to the costs, and the justice has no discretion. As soon as the Master's allocation has been proved and that demand has been made, and that the costs have not been paid within seven days of the demand, he is bound to issue his warrant. *Metropolitan Railway Company v. Turnham*, 14 C. B. (N.S.) 212, 222.

It would seem, therefore, to follow that if there is any question of the claimant's right to his costs that the objection should be taken before the Master, and if he thereupon refuse to tax, the question can be raised by *mandamus*. Section 52, note "Reviewing taxation," and section 1 of the Lands Clauses Consolidation Act, 1869, and notes.

"By the valuation of a surveyor."—This appears to refer to the cases provided for in section 58.

Recovering costs otherwise.—The costs may also be recovered in an action to recover the amount assessed. *South Eastern Railway Company v. Richardson*, 21 L. J. C. P. 122; and cf. *Todd v. Metropolitan District Railway Company*, 24 L. T. 435. In neither of these cases was the question raised that the Court had not jurisdiction to give judgment for the costs, inasmuch as a method of recovery was provided by statute.

A *mandamus* apparently will not lie to compel the company to pay the costs. Cf. *Reg. v. Hull and Selby Railway Company*, 6 Q. B. 70; *Reg. v. London and Blackwall Railway Company*, 4 R. C. 119. Sect. 53.

In the last-mentioned case, which was under a local Act prior to the Lands Clauses Consolidation Acts, but with a similar provision as to costs of assessment before a jury, the proper procedure was held to be:—to have the costs ascertained, to make a demand for them, and, if refused, to proceed by distress. PATTERSON, J., there said: "If after the costs were ascertained you could not levy by distress or otherwise, perhaps, a *mandamus* might be granted to assist you." S. C., p. 125.

If, however, an action will lie for the costs a *mandamus* would not be granted, as an action would prove an equally effectual remedy. *Reg. v. Hull and Selby Railway Company*, 6 Q. B. 70; *Reg. v. Lambourn*, 22 Q. B. D. 463; and see note "*Mandamus*" to section 21, p. 53.

See section 34, note "Recovery of costs," in cases where the assessment has been by arbitration, p. 34.

54. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attornies, at some convenient time and place appointed by him for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts, and the sheriff shall appoint a day, not later than the eighth day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of

Special jury to be summoned at the request of either party.

Sect. 54. twenty, in the manner used and accustomed by the proper officers of the superior courts.

"Any such Question," refers to the questions of disputed compensation arising under sections 21 and 68. See section 38, note "Any case of disputed compensation."

"Before they have issued their warrant."—As by section 38 they must give ten days' notice of their intention to issue their warrant, the owner has that period within which to give his notice of desire for a special jury.

In cases under section 68, as no such notice of issuing their warrant is required to be given by the promoters, the claimant who desires a special jury should state such desire in his notice that he desires his claim settled by jury as therein provided, but he may do so later. As the promoters under section 68 must summon the jury within twenty-one days, he should give his notice for a special jury within such time as will enable them to summon a special jury within the twenty-one days from the first notice mentioned in section 68 within which they must issue their warrant. The delivery of a notice for a special jury under this section does not, however, extend such period beyond the twenty-one days. *Glyn v. Aberdare Valley Railway Company*, 6 B. & S. 359.

"Sheriff."—See definition, sections 3 and 40.

Special jurors.—See 9 Geo. 4, c. 50, and 33 & 34 Vict. c. 77. By section 17 of the latter Act (the Juries Act, 1870), the method of nominating and reducing special juries in the High Courts in London and Middlesex was abolished unless any judge order to the contrary. A simpler method was provided by section 16; but the Act does not extend to the Sheriff's Court when sitting as a Compensation Court, and the method provided by section 54 still prevails.

An inquisition before the sheriff is not rendered void by an omission to strike the special jury on such a date as not to allow three days after such striking for summoning the special jury, it being an irregularity only. *Ex parte Great Western Railway Company*, 18 L. T. (o.s.) 92.

Deficiency
of special
jurymen.

55. The special jury on such inquiry shall consist of twelve of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and who may then be attending the Court, or can speedily be procured, so as to complete such jury, all

parties having their lawful challenges against such persons ; **Sect. 55.**
and the sheriff shall proceed to the trial and adjudication of
the matters in question by such jury, and such trial shall be
attended in all respects with the like incidents and, conse-
quences, and the like penalties shall be applicable, as herein-
before provided in the case of a trial by common jury.

"Their lawful challenges."—See note under same heading to
section 42, p. 90.

"With the like incidents."—As to these, see sections 43—53.

"If a full jury do not appear."—If the full number do not appear,
the assessment may be properly made by those who do appear unless
either party applies to have the full number made up. Cf. *Ex parte*
Great Western Railway Company, 18 L. T. (o.s.) 92.

56. Any other inquiry than that for the trial of which
such special jury may have been struck and reduced as afore-
said may be tried by such jury, provided the parties thereto
respectively shall give their consent to such trial.

Other
inquiries
before
same
special
jury by
consent.

"Struck and reduced."—That is provided for in section 54, for cases
arising under sections 21, 23 and 68.

As to the jurisdiction without such consent of the parties, see
section 50, note "Jurisdiction of sheriff and jury."

57. No juryman shall, without his consent, be summoned
or required to attend any such proceeding as aforesaid more
than once in any year.

Juryman
not to
attend
more than
once a
year.

Possibly this would not prevent the sheriff adding such a juryman
to a jury, if a full jury did not appear, and he was then attending in
Court. See sections 42 and 55.

58. The purchase money or compensation to be paid for
any lands to be purchased or taken by the promoters of the
undertaking from any party who, by reason of absence from
the kingdom, is prevented from treating, or who cannot after
diligent inquiry be found, or who shall not appear at the time
appointed for the inquiry before the jury as hereinbefore
provided for, after due notice thereof, and the compensation
to be paid for any permanent injury to such lands, shall be
such as shall be determined by the valuation of such able

Compensa-
tion to
absent par-
ties to be
deter-
mined by
a surveyor
appointed
by two
justices.

Sect. 58. practical surveyor as two justices shall nominate for that purpose as hereinafter mentioned.

1. "**By reason of absence is prevented from treating.**"—This does not, of course, imply that a person abroad may not treat, by agents or otherwise.

A person abroad who is so prevented may have the surveyor's valuation submitted to arbitration (section 64) and the amount of the surveyor's valuation, if over 20*l.*, must be paid into the bank. Sections 69, 71.

2. "**Or cannot after diligent inquiry be found.**"—This section does not apply to a case where there is a doubt as to the true ownership of the land, when both claimants thereto can be found. In such a case the value should be assessed by a jury, or by arbitration. If the wrong course has been taken, the money paid into the bank will not be paid out till the value has been ascertained in the proper manner, and paid into Court. *Ex parte The London and South Western Company*, 38 L. J. Ch. 527.

The owner when found can have the surveyor's valuation submitted to arbitration (section 64) and the amount of the surveyor's valuation, if over 20*l.*, should be paid into Court. Sections 69, 71.

Section 18 provides that a notice to treat shall be given to all persons who have an interest in the land as shall after diligent inquiry be known to the promoters. If the party after diligent inquiry cannot be found, or is out of the United Kingdom, the notice must be left with the occupier or affixed upon some conspicuous part as provided by section 19, p. 49.

3. "**Who shall not appear.**"—The claimant is entitled to 10 days' notice of the time and place of inquiry. Section 46, p. 93. If he does not appear, the inquiry is not proceeded with (section 47, p. 93) and the valuation as ascertained by the surveyor will be final as to the amount, and cannot afterwards be submitted to arbitration, as in the other two cases dealt with in this section. Section 64.

"**As two justices shall nominate,**" *i.e.*, in the manner provided by section 59. As to justices, see definition, section 3, p. 9.

Two
justices to
nominate a
surveyor.

59. Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the Kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his

valuation a declaration in writing subscribed by him of the Sect. 59. correctness thereof.

"Two Justices" includes a stipendiary. See section 3, definition "Justices" and note, p. 9.

"Upon such proof," i.e., of the same facts, as referred to in section 58.

"Nominate an able and practical surveyor."—When the promoters take possession of land prior to the amount being assessed, they must pay into the bank the amount claimed, or the amount ascertained by a surveyor to be appointed in the manner provided by this section. Section 85.

In respect of the value of commons where no committee is appointed to treat with the promoters, a surveyor appointed in the manner provided in this section must fix the amount. Section 106.

In a case under section 85, the appointment by the justices of the surveyor employed by the company, and who had already valued the land for them, was not considered in itself sufficient to invalidate the bond given. *Langham v. Great Northern Railway Company*, 1 De G. & Sm. 496, 498, 499.

In a case under the same section it was held that it was not necessary that the appointment of the surveyor should specify the particular lands to be valued, because the party, at whose instance the surveyor is appointed, is interested in seeing that the valuation is made of the right lands. *Poynder v. Great Northern Railway Company*, 16 Sim. 3.

"Shall annex to his Valuation a Declaration."—The declaration here referred to does not appear to be the same as the one mentioned in section 60, which he is required to make in the presence of a justice before entering upon the duty. The declaration here referred to does not, apparently, require to be made before a justice.

The surveyor may make his valuation in any manner as will enable him to do it fairly, and the court will not disturb it; but it is not enough that he should merely inspect the exterior of a building, he must also inspect the interior. *Cotter v. Metropolitan Railway Company*, 10 L. T. (N.S.) 777, a case under section 85, *post*.

60. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices, or one of them, make and subscribe the declaration following at the foot of such nomination; (that is to say,)

Declaration to be made by the surveyor.

"I, A. B., do solemnly and sincerely declare, that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

A. B.

"Made and subscribed in the presence of

."

Sect. 60. And if any surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

A similar declaration must be made by arbitrators and umpires before entering upon their duty. Section 33 and note, p. 72.

This declaration must be made before one of the justices appointing, who would, therefore, be one of the justices for the county, division, or borough. See section 3, definition, p. 6.

This declaration must apparently be annexed as well as the one made after valuation referred to in section 59. See section 61.

Valuation,
&c., to be
produced
to the
owner of
the lands
on de-
mand.

61. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

The said Nomination and Declaration.—The nomination is that by the justices under section 59. The “declaration” probably refers to the declaration under section 60, so that it is necessary that both the declaration before entering on the valuation (section 59), and the one after should be annexed.

Expenses
to be
borne by
promoters.

62. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

In the case where the claimant does not appear at the inquiry before a jury, the inquiry is not proceeded with. In such a case, it is not clear whether the promoters would be required to pay the cost of impanelling the jury under this section, or whether the claimant would be required to pay the half of such costs under section 51.

Purchase
money and
compensa-
tion, how
to be
estimated.

63. In estimating the purchase money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage (if any) to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the

powers of this or the special Act, or any Act incorporated Sect. 63. therewith.

Substantially the same provision is made as to juries by section 49. By that section, juries are directed to assess the amounts under these heads separately. Although there is no such provision in this case, arbitrators and justices would, no doubt, state the items separately, if desired, and in the event of any legal question arising as to the right to compensation they could be required to state a special case for the purpose of deciding it.

"In any of the cases aforesaid."—As to these, see section 21 and note, "Shall be settled in the manner hereinafter provided," p. 52.

Compensation for Land to be Purchased.—With the exception, perhaps, of yearly tenants and those having a less interest (section 121), every person who has an interest in land which promoters are authorized and required to take for the purposes of the undertaking is entitled to a notice to treat for his interest (section 18), and is entitled to have the value thereof assessed in the manner provided by the Lands Clauses Acts. Section 23. When the promoters have taken possession before purchase in accordance with the provisions in section 85, each person who has an interest in the land is likewise entitled to have his interest assessed in the same manner. Section 68. Persons whose lands are injuriously affected by the execution of the works, although no part of their land is taken, are also entitled to compensation. Section 68. The principles of compensation in this last case are dealt with in the notes to section 68. Here, it is proposed to deal with the principles for ascertaining the amount of the purchase money for land to be purchased. The same measure of compensation exists whether the method of assessment adopted is that by arbitrator, justices, surveyors, or juries. Sections 49 and 63.

Although this section directs that regard shall be had to different matters, it is important to notice that the thing to be ascertained is strictly the price to be paid for the land. These matters are merely items to be taken into account in ascertaining the purchase money or compensation in respect of lands taken or to be taken. Cf. *Commissioners of Inland Revenue v. Glasgow and South Western Railway Company*, 12 A. C. 315.

It is proposed to deal with the subject under these heads :—

1. The value of the land to be purchased.
2. The damage by reason of severance of the lands taken from those of the same owner which are not taken.
3. The damage caused by otherwise injuriously affecting lands not taken which were held with those taken.

I. The Value of the Land to be Purchased.—The fundamental principle in assessing compensation is to discover what the person will lose by having his land or his interest in it taken from him. It is the value of the land to the owner that is the subject of compensation, not merely its market value, nor its value to the promoters taking it, but its value to him. His interest may be subject to restrictions

Sect. 63. which lessen that value, or it may be held together with rights which are beneficial, or other advantages which enhance the value to him. It is the value of the land, with all its potentialities, and with all the actual use of it by the person who holds it, that is to be considered in assessing the compensation.

Burial Grounds.—The principle that the compensation to be paid to the owner was the value to him, as distinguished from the value of the land to the promoters, was laid down in connection with disused burial grounds. Thus, it was held that the rector of a parish, who, as such, has a freehold interest in the burial fees in the churchyard, is only entitled to be compensated for the loss of his interest therein as a burial ground, and if it has been closed for burial and promoters are authorised to take possession of it, they are not bound to pay for it on the basis of its value to them nor as land which has been secularized by the Act, but as lands consecrated and devoted to the purposes of a parish burial ground. *Stebbing v. Metropolitan Board of Works*, L. R. 6 Q. B. 37.

In the above case the land was to be taken for public purposes, but the principle would be the same in the case of a company authorised to take it for the purposes of profit. S. C., p. 45.

In *Hilcoat v. The Archbishop of Canterbury*, 19 L. J. C. P. 376, a case under a special Act, the opposite principle was laid down, and that case, in so far as it differs from *Stebbing's case*, must be considered as overruled.

It may be noted that the fee is not in the rector or vicar, it is said to be "in abeyance" or expectancy. *Vicar of St. Mary Abbots v. Parishioners*, Tristram's Jdgmts. 17, p. 19. It follows, therefore, that although the rector's freehold interest may be valueless, that inasmuch as disused burial grounds may be used for other spiritual purposes on the grant of a faculty, the land would not be without value to the church. The rector, therefore, would be entitled to claim compensation for the fee, the amount being paid into Court, he being in the nature of a trustee. *Campbell v. Mayor of Liverpool*, 9 Eq. 579. Promoters usually offer a substantial amount; but it would appear to be advisable when these grounds are to be taken by companies for profit that a clause be inserted in the Act of Parliament as to the basis of compensation. See *Stebbing v. Metropolitan Board of Works*, L. R. 6 Q. B. 37, p. 42.

As to what buildings may be erected on a disused burial ground, see the Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72).

Rights under a Will.—In a case where a testator bequeathed certain leasehold premises to trustees in trust to allow his sons to occupy them at a reduced rent as long as they, or the survivor, carried on business therein, it was held that in assessing the value pursuant to notices to treat that the valuation ought to be made as at the time when the house was about to be taken, and should be made of the exact interest which the parties would have had at the moment the notice to treat was given, assuming that the house had not been taken. The son's interest would be valued according to their right of occupancy at a reduced rent, less a depreciation from the fact that it might be determined by a variety of incidents, and the trustees' interest on the chance of their having to submit to a reduced rent in consequence of the business being carried on by the sons. *Penny v. Penny*, L. R. 5 Eq. 227.

Statutory Rights of Public Body.—In assessing the value of land taken from a public body in whom it is vested with special statutory rights, these rights are a subject of compensation, and the value of the land to the promoters may require to be taken into account in assessing the amount. Sect. 63.

Thus, where a public body have vested in it the bed and foreshore of a river for public purposes with power to grant licenses to persons to make docks, piers, wharves, and other erections, and to charge for the same such sum as in the opinion of a competent person shall be deemed to be the true and fair value thereof to the person obtaining such license; and a railway company were authorised to take part of the said foreshore for the purpose of erecting a wharf or landing stage, it was held that an arbitrator, in assessing the amount to be paid under the Lands Clauses Acts, was bound to consider the valuable rights which the owners possessed immediately before the passing of the company's special Act in granting licenses and in considering the value of those rights was bound to have borne in mind, *inter alia*, that the railway company, who already had their railway by the margin of this foreshore, would probably or possibly want this foreshore, and would have to pay for it accordingly a sum fixed on the basis of its value to them. *Conservators of River Thames v. London, Tilbury, and Southend Railway Company*, 68 L. T. (N.S.) 21.

In another case the promoters were empowered by the special Act to build a bridge over the river, but only after their plans had received the approval of the same conservators. This approval was granted, and it was afterwards contended that it prevented the conservators from claiming compensation for the land taken, but the Court held that they were entitled to such compensation. *Conservators of River Thames v. Victoria Station and Pimlico Railway Company*, L. R. 4 C. P. 59.

Public Houses.—On the same principle that it is the value to the owner that is to be paid for, if promoters take land to which a covenant beneficial to the lessor is annexed in actual enjoyment, the lessor is entitled to be compensated for the loss of the right arising from that covenant. *Bourne v. Mayor of Liverpool*, 33 L. J. Q. B. 15.

And arbitrators, in assessing the value of the lessor's reversion in a public house, ought to take into account that it is a licensed house and determine its reversionary value as such, and not merely as a house and shop. *Belton v. London County Council*, 68 L. T. 411.

Rights under Covenants.—Where land is taken from a lessee by promoters he is thereby released from his onerous covenants (*Slipper v. Tottenham and Hampstead Railway Company*, L. R. 4 Eq. 112; *Baily v. De Crespigny*, L. R. 4 Q. B. 180); but if the landlord thereby suffers he would have a right of compensation in respect thereof against the promoters.

Renewal of Lease.—If a lessee has a right of renewal of his lease, this right is also a subject of compensation. *Bogg v. Midland Railway Company*, L. R. 4 Eq. 310. But if the lessee has no such right, but merely a probability or expectancy that the lease will be renewed, this probability or expectancy is not a matter of compensation. *Ex parte Nadin*, 17 L. J. Ch. 421. And even if the lessee has laid out money on the land on the reasonable expectation of a renewal he will not be allowed compensation in respect thereof. *R. v. Liverpool and Man-*

Sect. 63. *Chester Railway Company*, 4 A. & E. 650. Under the wide terms used in the Hungerford Market Act, compensation was allowed for the expectancy of a renewal. *Ex parte Farlow*, 2 B. & Ad. 341; *Reg. v. Hungerford Market Company*, 9 A. & E. 463.

Equitable Interests.—Equitable interests are the subject of compensation as well as legal interests. As to the persons entitled to compensation in respect thereof, see section 18, note, "To all the parties interested," *ante*, p. 43.

Mines and Minerals.—As to these, see sections 77—85 of the Railways Clauses Act, 1845, *post*.

Goodwill and loss of profits.—It is under the principle that it is the owner's interest in the land which is to be assessed, that compensation is allowed for loss of goodwill, and to some extent for loss of profits. Goodwill is a word used somewhat loosely in popular language, and in its technical legal meaning it is confined mainly to certain rights which pass on the sale of a business. In cases of compensation it must be regarded in its widest sense, not as a subject of sale, but as a property in the hands of a person who desires to keep it. In this sense goodwill means the probability that persons who have previously dealt with a person will continue to do so. When, therefore, promoters take a man's business premises he is entitled to compensation, if by reason of their being so taken that probability is reduced; if, for example, the only new premises he can acquire are less convenient for his customers. In *Bidder v. North Staffordshire Railway Company*, 4 Q. B. D. 412, 432, BRAMWELL, L.J., indicated the subject of compensation in a case of this kind: "It is as though a house in a street were taken where a man carried on business, and there were other houses in the same street to be had, to which the business could be transferred with no loss of goodwill. In such a case no compensation for goodwill ought to be given. If the rent were greater, that ought to be compensated for; if the lease were shorter, that ought; and if other circumstances of loss or precariousness, they ought."

Even, however, if adjacent premises are obtained, a jury may rightly take into consideration a probable loss of business. *Reg. v. Scard*, 10 "Times" L. R. 545.

In a case where a man had carried on an old-established business of boot and shoe making in a house of which the lease was about to expire, and he had purchased the adjoining house for the purpose of moving into it and carrying on his business there, and promoters required the house thus purchased, it was held that the arbitrator had rightly heard evidence as to the profits made in the first house, and upon that basis awarded a sum of 1,000*l.* in respect of the profits he might have made at the house to be taken. *White v. Commissioners of Public Works*, 22 L. T. 591.

If there is what is called local goodwill, i.e., "the chance that the old customers will resort to the old place" (per Lord ELDON, in *Cutwell v. Lye*, 17 Ves. 355), such local goodwill would clearly be an interest of value to the owner, and a subject of compensation if the place were taken; but a personal goodwill which might not be the subject of sale, except with various covenants attached, may, nevertheless, be injured, inasmuch as the loss of the premises might prevent certain of the old customers resorting to the same person. Compensation has been allowed to a tailor under this heading (*Cooper v. Metropolitan Board of Works*, 25 Ch. D. 472), and to a solicitor (*Reg. v. Scard*, 10 "Times" L. R. 545).

Loss of profits may arise partly from loss of local connection and partly from inability to carry on the business so profitably during the

removal. This latter class of damage is treated, *infra*, under heading Sect. 63. "Damages for expulsion."

Loss of profits may also be due to the fact that the premises taken were in a position which attracted the attention of passers by, and that in consequence chance customers were numerous, and equally commanding premises could not be obtained; this would also be a subject of compensation as well as the loss of goodwill.

Usually those items, loss of profits and goodwill, local and personal, are not kept distinct, but a lump sum is found in respect of them, and unless questions arise as to how such compensation is to be divided, as between the occupier and other persons, as, for example, mortgagees or lessors, it is not necessary that awards or verdicts should state them more clearly. See *Cooper v. Metropolitan Board of Works*, 26 Ch. D. 472, and *Cooper v. North London Railway Company*, 34 L. J. Ch. 375.

It is important to notice that, although compensation is allowed for loss of goodwill and for loss of profits, it is merely because such goodwill or such possibility of profit enhances the value of the premises to the owner. It is the value of the premises to the owner that is to be ascertained, and that is the price to be paid; from which it follows that any sum given for loss of business is part of the consideration for the sale, and on a conveyance an "*ad valorem*" duty on that amount must be paid pursuant to the Stamp Act. *Commissioners of Inland Revenue v. Glasgow and South Western Railway Company*, 12 A. C. 315.

Potential or Prospective Value of Lands.—If the land from its situation or otherwise may probably become valuable, as if it be agricultural land near a town which may have a value for prospective building, this probability should be taken into account. *Reg. v. Brown*, L. R. 2 Q. B. 630. So also, if the proximity of the land to a reservoir may make the land valuable for the purpose of erecting mills, this factor should also be taken into account. *Ripley v. Great Northern Railway Company*, 10 Ch. App. 435, and see *R. v. JJ. of West Riding of Yorkshire*, 1 A. & E. 563.

If money has been spent upon land for the purpose of developing it, the price paid and the money so spent are not conclusive evidence as to the value of the land; it is only evidence to be taken into consideration in ascertaining the value, and may be regarded or disregarded. *Streatham Estates Company v. Commissioners of Public Works*, 52 J. P. 615.

The adaptability of land for a particular purpose may be taken into account, even where that purpose is the purpose for which the land is taken. *Re Arbitration between Countess Ossalinsky and Corporation of Manchester*, reported in Appendix IV., *post*, and see note to section 6 of the Waterworks Clauses Act, 1847, *post*.

In a case before the Privy Council, as to the compensation to be paid for minerals under the surface of land which was taken, it was said that, because a seam is not at the time of taking workable at a profit, it does not follow that no compensation is to be given for it if it is likely to prove profitable in the future. *Brown v. Commissioner for Railways*, 15 A. C. 240.

Damages for Expulsion.—Besides the loss of the property itself, there is not unusually a loss to the owner occasioned by his being turned out of his land or premises. Such loss is a subject of compensation, and includes loss of profit, costs of removal, loss of fixtures, and the like.

Thus in a case where a brewhouse was taken by a company, and the jury awarded a sum as compensation for the damage which the owner

Sect. 63. would suffer by reason of his having to give up his premises as a brewer from the date thereof until he could obtain suitable premises in which to carry on his business, they were held entitled to do so. *Jubb v. Hull Dock Company*, 9 Q. B. 443.

The principle of compensation for expulsion is the same as in trespass. Per ERLE, C.J., *Rickets v. Metropolitan Railway Company*, 34 L. J. Q. B. 257, p. 261.

Fixtures are required to be taken by promoters who take premises, even although they are trade fixtures, but if they are removed they will be required to pay only the loss occasioned by their being less valuable after removal. *Gibson v. Hammersmith Railway Company*, 32 L. J. Ch. 337.

Where promoters gave a tenant from year to year notice requiring him to give up possession in six months, but before the expiration of the six months he was told that they did not intend to take possession, he was, nevertheless, held entitled to compensation for any *bond fide* preparations for leaving the premises. *Reg. v. Commissioners of Rochdale*, 2 Jur. (N.S.) 861.

Similarly, where promoters had given a six months' notice under a local Act to a yearly tenant requiring possession in six months, but they did not, in fact, take possession for nearly two years, and then, having obtained the reversion, demanded possession, it was held that the tenant was entitled to compensation at least for the difference between the position of a mere tenant at sufferance and the position of a tenant with a right to retain possession for a fixed and definite period. *Cramwell v. Mayor of London*, L. R. 5 Ex. 284.

Where a similar notice was given, but possession was not taken for two years, the tenant claimed a loss of profits on his business during these two years by reason of the houses in the neighbourhood being pulled down by the promoters, this was held not to be a valid subject of compensation. *Reg. v. Vaughan*, L. R. 4 Q. B. 190.

Where under a special Act promoters were required to give six months' notice of their intention to take property, and in consequence of such a notice being given to the tenants of certain premises, these tenants took other premises in which to carry on their business and removed thereto, and the promoters took no steps towards obtaining possession of the premises with respect to which they had given notice, it was held that the tenants were entitled to a *mandamus* to compel the promoters to take the premises and to substantial damages for the additional rent, and such other damages as they had suffered. *Morgan v. Metropolitan Railway Company*, L. R. 4 C. P. 97.

In a case where a person held premises under a void lease, because granted by the executors instead of by the heir of a lost trustee, he was held to be entitled, on the premises being taken, to a sum for loss of profits and part of the value of the leasehold premises, because the occupant had increased the pecuniary value by expenditure upon the premises. *Ex parte Cooper, in re North London Railway Company*, 34 L. J. Ch. 373.

As to the Jurisdiction of Arbitrators and Jury, see section 23, note, "The same shall be so settled," *ante*, p. 57, and section 50, note, "Jurisdiction of Sheriff and Jury," *ante*, p. 95.

Reinstatement.—In certain cases where the land and premises are used for a particular purpose, as, for example, a school, and where it is necessary to have another site in the vicinity, the legislature have provided that the compensation shall be awarded on the principle of reinstatement, by which is meant that the amount of compensation to be

awarded shall be assessed according to the cost of acquiring an equally convenient site and erecting equally convenient premises. For an example of this, see *London School Board v. South Eastern Railway Company*, 3 "Times" L. R. 710. Sect. 63.

This subject will be found discussed fully by Lord SHAFT in an award in *The Corporation of Edinburgh v. North British Railway Company*, which is set out in Appendix III., post. b 70 o

II. Damage by reason of Severance of the Lands taken from those held therewith.—In order that damages may arise from severance, it is not necessary that the land should be held under the same title for the same estate, or for the same purpose, or that the lands should be contiguous. It is enough if both parcels of land are held by one and the same owner, and if the unity of ownership conduces to the advantage or protection of the property as one holding. That is a question of fact dependent upon the circumstances of each case. If the several pieces of land owned by the same person are so near to each other and so situated that the possession and control of each gives an enhanced value to all of them, they are lands held together within the meaning of sections 49 and 63. See the judgments in *Conquer Essex v. Local Board for Acton*, 14 A. C. 153; *Caledonian Railway Company v. Lockhart*, 3 Macq. 808, 815.

In the former of these cases, the land taken was let on building leases, and of that not taken, part was in hand and part was let for short periods for brickmaking. The whole, including what was taken and what was not, had been laid out as a building estate, but the land taken was separated from the other lands partly by other lands belonging to the owner and partly by a railway. The House of Lords held that these lands were lands held with the lands taken within the meaning of sections 49 and 63.

In another case, where it was decided that the lands were held together, the facts were as follows:—The plaintiffs, a volunteer corps, held land under lease, which they used as a rifle range; immediately beyond the butts was marsh land, and beyond the marsh land were marsh meadows. The corps had leased these marsh meadows to prevent accidents from stray bullets, and had entered into a verbal agreement to pay a fixed sum in respect of the injury that might happen to cattle on the intervening land. The defendants took part of the marsh meadows in order to make a road, and in consequence of which the rifle range had to be abandoned. The Court considered they were held together, mainly on the ground that they were held for a common purpose. *Holt v. Gas Light and Coke Company*, L. R. 7 Q. B. 728.

In a case where land was held on lease for thirty years, subject to the right of the lessor to determine the lease as to the whole or as to part by a three months' notice, and notice to treat for a strip was given, but before any proceedings were taken in regard to it, the lessor determined the lease as to the strip by a notice, and during the currency of that notice the company took possession, it was held that the lessee was only entitled to damages for severing the remainder of his land during the continuance of the term of three months for which the land taken was then held. The only ground upon which this decision can be supported would appear to be that the Court could see no real tangible claim in respect of such severance. *Reg. v. Kennedy* [1893], 1 Q. B. 533, explained in *Badley Heath Railway Company v. North* [1894], 2 Q. B. 579.

When a riparian owner has his right of flow and of access to a river taken from him, this is also apparently a case of severance, but this decision may to some extent depend on the words of the special Act.

Sect. 63. *Duke of Buccleuch v. Metropolitan Board of Works*, L. R. 5 H. L. 418, pp. 459, 460.

Where a landowner has his land taken and he has also a right of pre-emption over adjoining land which was not taken, it was held that the right of pre-emption was personal, and that the promoters were not bound to purchase it or apparently pay compensation for its reduction in value by reason of the land being taken. *Clout v. Metropolitan and District Railways Joint Committee*, 48 L. T. 257.

Potential or Prospective Use of Severed Land.—In estimating the damage done to the land by severance, the potential use of the land may be taken into account as well as in estimating the value of the land taken. If the prospective value would be depreciated by severance that may be considered. Thus if a jury come to the conclusion that agricultural land will soon be valuable for building purposes, and that a portion of land will, by reason of the severance, be rendered useless as building land, that depreciation ought to be considered in assessing the amount. *Reg. v. Brown*, L. R. 2 Q. B. 630.

In that case the damage was caused by reason of access being taken away. Under the Railways Clauses Consolidation Act (8 Vict. c. 90) ss. 68, 69, magistrates have power to order accommodation works in such a case, but as they could then have ordered only such access as was suitable to agricultural land, it was held that the jury in considering the land as suitable for building purposes were right in not taking this into account. S. C.

Where a man has a reservoir on the land which is not taken, the arbitrator is justified in taking into account the probable loss he might have suffered by supplying mills with water on the land taken. *Ripley v. Great Northern Railway Company*, L. R. 10 Ch. 435.

Mines.—When land is taken but the minerals are not, there is no compensation payable for severance or injurious affection of the minerals until the time arrives when the landowner is desirous of working them. The compensation in respect of mines is regulated in most undertakings by special clauses, as, for example, the Railways Clauses Act, 1845 ss. 77—85, *post*, and the Waterworks Clauses Act, 1847, ss. 18—27, *post* and see *Holliday v. Mayor of Wakefield* (1891), A. C. 81; *Lord Gerard v. London and North Western Railway Company* (1895), 1 Q. B. 459.

III. Injurious affecting Lands not taken which were held with those taken.—The general principles of compensation for injuriously affecting lands, when land is not taken, are discussed in the notes to section 68.

The principles of compensation when land is taken are somewhat different. If no land is taken from an owner, it is clear that no compensation is allowed for any damage caused by the carrying on or use of the works as authorised by Parliament, although it is allowed for damage caused by the construction of the works. *Hammersmith Railway Company v. Brand*, L. R. 4 H. L. 171. If, however, part of a proprietor's land is taken from him, and the future use as authorised of the part so taken may damage the remainder of the proprietor's land, then such damage may be an injurious affecting of the proprietor's other lands, though it would not be an injurious affecting of the land of neighbouring proprietors from whom no land had been taken for the purpose of the intended works. *Copper Essex v. Local Board for Acton*, 14 A. C. 163; *1 HALSBURY, L.C.*, 161. In that case the subject for compensation was stated by Lord MACNAGHTEN thus: "When lands are required for the purpose of a public undertaking, and the owner claims compensation

for injury to other lands held therewith, I think the tribunal which Sect. 63.
 assesses compensation is bound to take into consideration the purpose of the undertaking, the consequences likely to result from the execution of the works on the land required, and any alteration in the character of the property which those works are calculated to bring about" (p. 178). From that statement of the principle it would appear to follow that when the works are carried on upon the land taken, and the depreciation is due to the use of the works which use is in itself legal, compensation is nevertheless to be awarded if such depreciation in fact takes place, and it is not necessary to show that the use of the works if unauthorised, would have given rise to actionable damage. See S. C. per Lord WARREN, p. 166; but of this Lord HALSBURY expressed doubt (p. 159); and *Buckle v. Metropolitan Board of Works*, L. R. 5 H. L. 458. A further proposition should be noticed. If land is taken from a proprietor, and he complains of the injury caused to the remainder of his land by reason of the use of part of the works, which part is not constructed on the land taken from him, he has no right to statutory compensation. *Caledonian Railway Company v. Ogilvy*, 2 Macq. 229; *City of Glasgow Union Railway Company v. Hunter*, L. R. 2 H. L. (Sc.), 78, and see note to section 68.

These principles have been applied in the following cases:—

In a case where a railway company took some land and proposed to make their railway on it close to a cotton mill belonging to the same proprietor, and the jury found a sum which included injury to the premises by reason of the risk of fire being so much increased by the proximity to the railway as to render them less fit and convenient for the purposes of a cotton mill, and to make the mill not insurable except at a greatly increased premium, it was held that the jury had not exceeded their jurisdiction in so doing, and that the rule that compensation could only be given for that which, unless sanctioned by the private statute would otherwise have been an actionable wrong, had no application to cases where the act complained of was done on land which had been taken from the claimant by force of statute. *In re Stockport, Timperley, and Altrincham Railway Company*, 33 L. J. Q. B. 251; approved in *Copper Essex v. Acton Local Board*, 14 A. C. 153.

Under the Thames Embankment Act, 1862, which incorporated the Lands Clauses Act, a riparian owner, who had the right of flow of the river along the whole frontage of his property on which was a mansion, and the use of a causeway which ran from his garden to low-water mark in the river, was deprived of the use of the causeway and of his communication with the river, and of the right of flow by the embankment of the river and the formation of a road between it and the garden. The umpire in assessing the compensation took into consideration the loss of the river frontage, the loss of privacy, and increase of dust and noise consequent on the creation of the embankment and road. It was held that the owner's rights over the causeway were "lands" within the meaning of the special Act, and that the umpire was justified in taking these matters into consideration in assessing the compensation to be paid by reason of the taking of the causeway and right of river flow, and of the damage by severance and other injurious affection of the remaining lands. *Duke of Buccleuch v. Metropolitan Board of Works*, L. R. 5 H. L. 416.

In the last case, the question as to injuriously affecting the remaining lands was so complicated with other questions, that it has been doubted as to how far it was an authority for the general propositions above set out. See per Lord BLACKBURN in *Caledonian Railway Company v.*

Sect. 63. *Walker's Trustees*, 7 App. Cas. 259, at p. 297; but the general principle is now established by *Couper Essex v. Acton Local Board*, 14 A. C. 153.

In that case the land was taken for the purpose of making sewage works, and was severed from land laid out and intended to be used as a building estate. Evidence was given before a jury at the inquisition to the effect that the existence of sewage works, even if they were conducted so as not to create an actionable nuisance, depreciated the market value of neighbouring land for building purposes. The jury in awarding compensation awarded a large sum in respect of the severance and other injurious affection. It was held that the jury had not exceeded their jurisdiction in so doing, and that compensation might be awarded for damage to be sustained by the owner by the injurious affection of his other lands, not only by the construction of the sewage works on the land taken, but also by their use. *Couper Essex v. Acton Local Board*, *supra*.

Mines.—For the provisions as to compensation in respect of injuriously affecting mines, see *post*, sections 77—85 of the Railways Clauses Act 1845, and sections 18—27 of the Waterworks Clauses Act, 1847, and the notes to these sections.

Agreement by Promoters to restrict Construction of Works.—If promoters of undertakings, whether acting solely for the public good or for the purpose of profit, offer to enter into a contract not to use the land they are authorised, and require to take for the purposes for which they are authorised to take the land, such offer if accepted would not bind their successors, and would be void; and, therefore, cannot be used as a ground for reducing the amount to be assessed for injuriously affecting the lands of the same owner which are not taken.

Thus where harbour trustees were empowered to take part of a person's land, from which there was an unrestricted entrance to the harbour, and offered that the conveyance should restrict their use of the ground taken so as not to interfere with the access from the remaining property to the harbour, it was held that as the trustees had power to make erections on the piece of ground taken, which would effectually destroy the frontage, that they had no power to make such an agreement, and that the landowner was entitled to be compensated on the basis that such frontage might be destroyed. *Ayr Harbour Trustees v. Orralcald*, L. R. 8 A. C. 623.

If the trustees in that case could have bound themselves and their successors by the agreement, and had made such an offer which the landowner refused to accept, it would appear that he could not get compensation for the injury which he might have thus prevented. S. C., p. 634.

In a case where the land taken was part of a farm where the owner trained and exercised steeplechase horses and hunters, and evidence was given that the remainder would be useless for that purpose, and that he would suffer consequential damage by reason of his not being able to carry on his business, and that he would have to sell his horses at a loss, the jury awarded a large sum in respect thereof. The Court refused to quash the finding on the ground that the application was too late, but stated that it was not clear whether the owner was entitled to compensation for this loss. *Reg. v. Sheward*, 9 Q. B. D. 741, p. 743. The Andover and Weighill Horse Company got a clause in the *Heaton Railway Act*, giving them compensation under similar circumstances, although no land of the horse company was taken under the Act.

Second Assessment.—As to whether a second assessment can be made for future unforeseen damage, see section 68, note, *post*, p. 142.

Settlement.—There is no provision in the Lands Clauses Acts allowing promoters to set off against an owner's claim for compensation for severance or other injurious affection, that the value of the land will be enhanced by reason of the use of the land taken by the promoters. Sect. 63.

The claim to do so has been seldom made. The point was raised in *Senior v. Metropolitan Railway Company*, 2 H. & C. 258, and *WILDE, B.*, said: "It is the first time such an idea has been brought forward, and I see no reason for giving countenance to it" (p. 269). In *Eagle v. Charing Cross Railway Company*, L. R. 2 C. P. 638, a plaintiff's easement of light was infringed in consequence of which he suffered damage by loss of trade, but the umpire found that, although such injury had been caused, that the plaintiff's interest in the premises was not diminished as the value of the property had been enhanced by the execution of the works, but the Court held that this latter part of the finding was wholly irrelevant.

The Legislature have, however passed certain local acts for purposes of public utility in which the clauses of the Lands Clauses Acts dealing with and giving compensation for lands injuriously affected have not been incorporated, apparently on the ground that any injurious affection would be compensated by the benefit received. See *Ferrar v. Commissioners of Sewers*, L. R. 4 Ex. 227, under City of London Sewers Act, 1846; see *Metropolitan Management Act*, 1858, and see *Reg. v. Mayor of London*, L. R. 2 Q. B. 292; *Bigg v. Corporation of London*, 15 Ex. 376.

As the future use of the land may be taken into account in estimating the damage by severance, and by other injurious affection of the land belonging to the same owner not taken (*Essex v. Acton Local Board*, 14 A. C. 153), it would appear that if the value of such land is enhanced by the future use of the land taken, the damage may in such cases be paid. But it cannot be set-off against the value of the interest taken, nor against other injuries to land which would give a cause of action. Under the "Victorian Lands Compensation Act, 1869," provision is made that regard shall be had to the enhancement of value of the adjoining land belonging to the person to whom compensation is to be made. The Privy Council held this to mean that where an owner is entitled to compensation for damage to his lands by reason of severance from them of the land taken, or the lands being otherwise injuriously affected, and there is enhancement in value of his adjoining land, the one should be set-off against the other, and they further held that the enhancement in value may arise from the use as well as the construction of the works. *Harding v. Board of Land and Works*, 11 A. C. 208.

Recoupment.—Local bodies have also been allowed to purchase more land than was actually necessary for the work authorised, and have been empowered to lease and sell such land for the purpose of recouping their outlay. *Callovey v. Mayor of London*, L. R. 1 H. L. 34; *Quinton v. Mayor of Bristol*, 17 Eq. 524.

Provisions have lately been inserted in local Acts for public purposes, in order to enable public bodies to recoup themselves for their outlay, by receiving from the owners of premises and lands part of the enhanced value. The report by a select committee of the House of Lords as to the form of these enactments, and a copy of these provisions from a local Act will be found in Appendix II., *post*.

64. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the bank under Where compensation to absent

Sect. 64. party has been determined by a surveyor, the party may have the same submitted to arbitration. the provisions herein contained, by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid, could not be found or was absent from the the kingdom, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the moneys so deposited under the provisions herein contained by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorised or required to be submitted to arbitration.

"By the Valuation of a Surveyor," i.e., pursuant to section 58. The case of the party not appearing, referred to in that section, is not included in this section.

Deposited in the Bank.—The provisions are to be found in sections 69—80.

"In the same manner."—As to the procedure in arbitrations, see sections 23, 25—37, and 63, and the Arbitration Act, 1889, *post*.

Question to be submitted to the arbitrators.

65. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

"The case last aforesaid," i.e., in the cases mentioned in section 64.

If further sum awarded, promoters to pay or deposit same within fourteen days.

66. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default thereof, the same may be enforced by attachment, or recovered with costs by action or suit in any of the Superior Courts.

"Enforced by Attachment."—Generally as to enforcing an award, see section 36, note "Enforcing the award," *ante*, p. 78.

Costs of the arbitration.

67. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such

arbitration, to be determined by the arbitrators, shall be in Sect. 67.
the discretion of the arbitrators, but if the arbitrators shall
determine that a further sum ought to be paid or deposited
by the promoters of the undertaking, all the costs of and
incident to the arbitration shall be borne by the promoters of
the undertaking.

"The Costs of and Incident."—As to costs in other cases of
arbitration, see section 34, *ante*, p. 73; and see the notes thereto, as to what
costs are included, and see also sections 51 and 52, *ante*, pp. 100, 102.

"To be determined by the Arbitrators."—See section 34, note
"To be settled by the arbitrators," *ante*, p. 74. If either party require,
the amount must be taxed by a taxing master, by section 1 of the Lands
Clauses Consolidation Act, 1869, see *infra*, and see the notes thereto.

Recovering the Costs.—See note to section 34, "Recovery of the costs,"
ante, p. 76.

68. If any party shall be entitled to any compensation in
respect of any lands, or of any interest therein, which shall
have been taken for or injuriously affected by the execution
of the works, and for which the promoters of the undertaking
shall not have made satisfaction under the provisions of this
or the special Act, or any Act incorporated therewith, and
if the compensation claimed in such case shall exceed the
sum of fifty pounds, such party may have the same settled
either by arbitration or by the verdict of a jury, as he shall
think fit; and if such party desire to have the same settled
by arbitration, it shall be lawful for him to give notice in
writing to the promoters of the undertaking of such his
desire, stating in such notice the nature of the interest in
such lands in respect of which he claims compensation, and
the amount of the compensation so claimed therein; and
unless the promoters of the undertaking be willing to pay
the amount of compensation so claimed, and shall enter into
a written agreement for that purpose within twenty-one
days after the receipt of any such notice from any party so
entitled, the same shall be settled by arbitration in the
manner herein provided; or if the party so entitled as afore-
said desire to have such question of compensation settled by
jury, it shall be lawful for him to give notice in writing of

To be
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the option
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party
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sation.

Sect. 64. the provisions herein contained, by reason that the owner of party has been determined by a surveyor, the party may have the same submitted to arbitration. or party entitled to convey such lands or such interest therein as aforesaid, could not be found or was absent from the the kingdom, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the moneys so deposited under the provisions herein contained by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorised or required to be submitted to arbitration.

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Costs of the arbitration.

67. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such

leave the question of the claimant's title to be settled on proceedings to enforce or to set aside the award or verdict. The Court will not restrain proceedings on the ground that the claimant has no right to compensation, and that the proceedings will be fruitless. See section 23, note "The same shall be so settled," *ante*, p. 57; section 25, note "Restraining Arbitration," *ante*, p. 64; section 50, note "Jurisdiction of Sheriff and Jury," *ante*, p. 95. If, however, a person make an unsuccessful claim, he will not be entitled to the costs of the inquiry. *Todd v. Metropolitan Railway Company*, 19 W. R. 720. Sect. 68.

No other remedy if act *intra vires*.—If the promoters of an undertaking act properly within the limits of their statutory powers the only remedy for injurious affection of land is that provided by this and the special Act, and the person whose property is injured cannot proceed by action for damages or injunction to restrain the promoters. Thus, where ancient lights are likely to be interfered with, the owner may proceed under this section, but no other action will lie. *Duke of Bedford v. Dawson*, 20 Eq. 353; *Clark v. School Board for London*, 9 Ch. 120; and see per Lord BLACKBURN, *Caledonian Railway Company v. Walker's Trustees*, 7 A. C. 259, p. 293.

If the promoters acting within their powers do damage, for which no remedy is given by this or the special Act, the person damaged has no remedy. *Vaughan v. Taff Vale Railway Company*, 5 H. & N. 679; *Hammermith Railway v. Brand*, L. R. 4 H. L. 171; and see cases cited, *infra*, under "Principles of compensation for land injuriously affected."

"Any Lands or any Interest therein."—See definition of "Lands," in section 3 and note thereon, *ante*, pp. 5, 7. As to the various interests to be compensated, see section 18, notes "Lands" and "To all the parties interested," *ante*, pp. 33, 43. See also the notes to the same section as to what lands the promoters of an undertaking may take. Easements, when disturbed, do not come under lands which have been taken, but come under this section as lands which have been injuriously affected. Under the Waterworks Clauses Act, 1847, when the whole stream is diverted, the procedure is the same as for land taken; if part only, the procedure is the same as for land injuriously affected. See notes to section 6 and 12 of that Act, *post*.

"Which shall have been taken."—The promoters of an undertaking authorised to take lands may not take them except according to the provisions of this and the special Act. Sections 84—88, *infra*, deal with the procedure when the promoters desire to take possession before the price has been ascertained or the purchase completed. Possession may also be given by consent of the proprietors of the land. As to this, see note to section 84, *post*. A third class of cases arises where the promoters have entered upon lands and have omitted by mistake to purchase any interest thereon. These interests they may purchase within six months of the notice of such interest or within six months after the right thereto shall have been established by litigation if necessary. Sections 124—126.

If the promoters take possession of land otherwise than in these ways, or without having made payment, they are trespassers and are liable to penalties under section 89; they may also be restrained from remaining in possession, and are liable also to an action for damages in trespass. Section 18, note "They shall give notice," *ante*, p. 40. In such

Sect. 68. such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any of the superior courts.

"Entitled to any Compensation."—A person is not entitled to compensation unless it can be shown that a right of compensation is given to him either by this Act or by the special Act. If there is no provision in the special Act giving compensation for injurious affection of lands, and if section 68 is not incorporated, no party is entitled to compensation for the injurious affection of his lands, if no other land of his has been taken. *Ferrar v. Commissioners of Sewers*, L. R. 4 Ex. 227.

Where the special Act incorporates the Lands Clauses Act, but excludes those provisions which relate to "the purchase and taking of lands otherwise than by agreement," then sections 16—68 are all excluded (*S. C. and R. v. Mayor of London*, L. R. 2 Q. B. 292), and, in such a case, in the absence of provision in the special Act, there is no right to compensation.

If, however, section 68 is incorporated, but there is no proviso in the special Act giving compensation for injurious affection, it has been questioned whether section 68 does in itself give a right or merely supplies the machinery for determining the amount. *Ferrar v. Commissioners of Sewers*, L. R. 4 Ex. 227, 231. It seems clear, however, that section 68 does give a right to compensation for the injurious affection of lands, at least when read with other sections of the Lands Clauses Act. In *Reg. v. St. Luke's* (L. R. 6 Q. B. 572), LUSH, J., delivering the opinion of the Court (BLACKBURN, MELLOR, and LUSH, JJ.), said: "We entirely agree with the Court of Exchequer (i.e., *Ferrar v. London Commissioners of Sewers*, L. R. 4 Ex. 1, overruled on another point in L. R. 4 Ex. 227), that, where the entire Act is incorporated as it is here, no other enactment is needed in order to confer the right to compensation for lands injuriously affected." This opinion was confirmed in the Exchequer Chamber (L. R. 7 Q. B. 148), and the Court further held that because a special Act gave compensation in particular cases not necessarily within section 68, that this was not inconsistent with compensation also being given under section 68. In *Broadbent v. The Imperial Gas Light Company*, 26 L. J. Ch. 277, 280, an opinion is indicated that section 68 alone would give a right to compensation for the injurious affection of lands by the execution of the works.

If a person make a claim for compensation for injuriously affecting, it is the duty of the arbitrator or jury to find the amount only and to

leave the question of the claimant's title to be settled on proceedings to enforce or to set aside the award or verdict. The Court will not restrain proceedings on the ground that the claimant has no right to compensation, and that the proceedings will be fruitless. See section 23, note "The same shall be so settled," *ante*, p. 57; section 25, note "Restraining Arbitration," *ante*, p. 64; section 50, note "Jurisdiction of Sheriff and Jury," *ante*, p. 95. If, however, a person make an unsuccessful claim, he will not be entitled to the costs of the inquiry. *Todd v. Metropolitan Railway Company*, 19 W. R. 720. Sect. 68.

No other remedy if act intra vires.—If the promoters of an undertaking act properly within the limits of their statutory powers the only remedy for injurious affection of land is that provided by this and the special Act, and the person whose property is injured cannot proceed by action for damages or injunction to restrain the promoters. Thus, where ancient lights are likely to be interfered with, the owner may proceed under this section, but no other action will lie. *Duke of Bedford v. Dawson*, 20 Eq. 353; *Clark v. School Board for London*, 9 Ch. 120; and see per Lord BLACKBURN, *Caledonian Railway Company v. Walker's Trustees*, 7 A. C. 259, p. 293.

If the promoters acting within their powers do damage, for which no remedy is given by this or the special Act, the person damaged has no remedy. *Vaughan v. Taff Vale Railway Company*, 5 H. & N. 679; *Hammermith Railway v. Brand*, L. R. 4 H. L. 171; and see cases cited, *infra*, under "Principles of compensation for land injuriously affected."

"Any Lands or any Interest therein."—See definition of "Lands," in section 3 and note thereon, *ante*, pp. 5, 7. As to the various interests to be compensated, see section 18, notes "Lands" and "To all the parties interested," *ante*, pp. 33, 43. See also the notes to the same section as to what lands the promoters of an undertaking may take. Easements, when disturbed, do not come under lands which have been taken, but come under this section as lands which have been injuriously affected. Under the Waterworks Clauses Act, 1847, when the whole stream is diverted, the procedure is the same as for land taken; if part only, the procedure is the same as for land injuriously affected. See notes to section 6 and 12 of that Act, *post*.

"Which shall have been taken."—The promoters of an undertaking authorised to take lands may not take them except according to the provisions of this and the special Act. Sections 84—88, *infra*, deal with the procedure when the promoters desire to take possession before the price has been ascertained or the purchase completed. Possession may also be given by consent of the proprietors of the land. As to this, see note to section 84, *post*. A third class of cases arises where the promoters have entered upon lands and have omitted by mistake to purchase any interest thereon. These interests they may purchase within six months of the notice of such interest or within six months after the right thereto shall have been established by litigation if necessary. Sections 124—126.

If the promoters take possession of land otherwise than in these ways, or without having made payment, they are trespassers and are liable to penalties under section 89; they may also be restrained from remaining in possession, and are liable also to an action for damages in trespass. Section 18, note "They shall give notice," *ante*, p. 40. In such

Sect. 68. a case, the landowner is not bound to proceed under this section but may bring an action. *Stretton v. Great Western and Brentford Railway Company*, 5 Ch. App. 751. But if the promoters take possession under section 85, and remain therein after the time limited for the compulsory taking of land without payment of compensation, their possession is not unlawful, and no action of ejectment will lie. It is for the landowner in such a case to initiate proceedings under this section for compensation. *Doe d. Armistead v. North Staffordshire Railway Company*, 20 L. J. Q. B. 249. And it will be a good answer in such a case to a suit for specific performance that the landowner has not taken the steps indicated by this section. *Adams v. London and Blackwall Railway Company*, 19 L. J. Ch. 557.

In the case of a person in possession of land as a tenant from year to year, which land has been taken, the remedy of the tenant is not under this section but under section 121. *Knapp v. London, Chatham, and Dover Railway Company*, 32 L. J. Ex. 236, and see notes to section 121, *post*.

Must be an Actual Taking.—In order, however, that this section may apply, the lands must actually have been taken or injuriously affected. The mere delivery of a notice to treat is not sufficient; the delivery of such a notice gives the landowner a right to have the value of the land assessed as provided by section 21 and subsequent sections. See note to section 21, "Shall be settled in manner hereinafter provided," *ante*, p. 52. Section 68 applies when the lands have been actually taken into the possession of the promoters and no action will lie for the amount claimed as provided by this section for lands for which a notice to treat only has been given. *Burkinshaw v. Birmingham and Oxford Junction Railway Company*, 20 L. J. Ex. 246.

Similarly, if after a notice to treat, the promoters give notice of entering under section 85, and in accordance therewith make a deposit and give a bond, but do not actually enter, this section does not apply. *Reg. v. Manley-Smith; Re Church and London School Board*, 67 L. T. 197.

But if there has been a notice to treat and actual entry made afterwards, the procedure is not to have the amount assessed as provided by section 21, but the proper procedure is under this section. *Eaton v. Mid Great Western Railway Company*, 10 Ir. L. R. (1847), 310.

What is a taking.—A person had a leasehold interest in premises which were sublet to a yearly tenant; a notice under the special Act that the land would be required was given to the lessee, but the company subsequently arranged with the yearly tenant and received from him the key. The lessee proceeded under this section, and as the company did not summon a jury, brought an action to recover the amount claimed. It was pleaded that the company had not taken possession, but the jury found that they had, and the Court held that they had rightly so found and that an action lay under this section. *Barker v. Metropolitan Railway Company*, 17 C. B. (N.S.) 785.

Where a contractor had brought some waggons and rails and other implements on the land and left them but did not commence work, and it was shown that he had the consent of the tenants, and that he had done it without being authorised by the promoters, it was held that no actual taking was shown and an injunction restraining the promoters was refused. *Standish v. Mayor of Liverpool*, 1 Drew. 1.

"Injurious affected."—When land has been taken, the compensation for the injurious affection of land of the same owner held therewith, is assessed as part of the purchase money for the land taken, as provided by sections 49 and 63. As to the principles of compensation in such a case, see notes to section 63. All other injurious affection of lands by reason of the execution of the works, if the amount exceeds 50*l.*, is assessable (if at all) under this section. As to the principles of compensation in such a case, see note to this section, *infra*, p. 129. Sect. 68.

Thus, a tenant from year to year, whose premises have been affected, should proceed under this section if no part has been taken and he claims more than 50*l.* (*Reg. v. Sheriff of Middlesex*, 10 W. R. 717); but, if part or the whole of his premises be taken, the proceedings should be before justices pursuant to section 121. *Reg. v. Manchester, Sheffield, and Lincolnshire Railway Company*, 4 E. & B. 88; *Knapp v. London, Chatham, and Dover Railway Company*, 32 L. J. Ex. 236, and cases cited in note to section 121, *post*.

Similarly a limited owner, or person under disability such as a tenant for life, may proceed under this section and claim compensation for permanent injury to the land in the same way as an owner in fee. *Stone v. Mayor of Yeovil*, 2 C. P. D. 99.

The possessor of an *interessé termini* would also appear to have the right of claiming under this section. *Gillard v. Cheshire Lines Committee*, 32 W. R. 943.

Shall exceed the sum of 50*l.*—No provisions are made in this section for the cases where the amount claimed is 50*l.* or under, but in such cases jurisdiction is given to justices to assess the amount (section 22). The procedure in such a case is regulated by section 24. For cases thereon, see the notes to these sections, *ante*, pp. 55, 59. As to section 22 giving a right to compensation, see *Reg. v. St. Luke's*, L. R. 6 Q. B. 572, p. 576, and L. R. 7 Q. B. 148, p. 152.

"Such party may have the same settled."—It is the party claiming who must begin the proceedings to have the amount settled whether the lands have been taken or injuriously affected. *Doe d. Armistead v. North Staffordshire Railway Company*, 20 L. J. Q. B. 249; *Adams v. London and Blackwall Railway Company*, 19 L. J. Ch. 557, cited *supra*. In the case of injuriously affecting merely, under which is included the disturbance of easements, the promoters are not bound to pay compensation or to take any steps to have the same ascertained, before they proceed to execute their works, nor are they bound by sections 84 or 85 to make any deposit or to enter into any bond. *Hutton v. London and South Western Railway Company*, 7 Hare 259; *Macey v. Metropolitan Board of Works*, 33 L. J. Ch. 377; *Temple Pier Company v. Metropolitan Board of Works*, 34 L. J. Ch. 262. Nor can they be required to take the injured premises or do any act in respect thereof. *Reg. v. Poulter*, 20 Q. B. D. 132.

The party claiming is not bound to give a month's notice of his claim or to take proceedings within six months of the accrual of his claim, in cases where the promoters are a public body, under a statute which provides that they are entitled to one month's notice of any proceedings to be taken against such body, and that such proceedings must be brought within six months of the accrual of the cause of action or ground of claim or demand. Proceedings to recover com-

Sect. 68. compensation for works done, under powers conferred by statute on such a body, do not fall within such a proviso. *Delany v. Metropolitan Board of Works*, L. R. 2 C. P. 532; L. R. 3 C. P. 111.

"Stating in such Notice the Nature of the Interest."—This provision is similar to the one made in section 23, except that if the owner take no steps the promoters are not bound to pay any compensation. The particulars of the nature of the interest required by this section are practically the same as those referred to in section 21, and required under section 23. *Healey v. Thames Valley Railway Company*, 13 W. R. 44, and see the cases cited to section 21, note "The particulars of his claim," *ante*, p. 51. A person who has a 14 years' lease of premises with an option of determining it on six months' notice, and who determines it because a railway company are about to injure his right to light, ought only to state his interest as lasting to the expiration of the six months' notice. *Reg. v. Poulter*, 20 Q. B. D. 132.

"By Arbitration in the manner herein provided."—That is in the manner provided in sections 25—37, which are now to be read with the Arbitration Act, 1889 (*post*). Section 34 which provides how costs are to be borne also applies to this section. *Yates v. Mayor of Blackburn*, 29 L. J. Ex. 447; *Metropolitan District Railway Company v. Sharpe*, 5 A. C. 425, and see notes to section 34, *ante*, p. 73.

"Within twenty-one days . . . issue their warrant."—If a claimant has given a notice of his desire to have the compensation assessed by a jury, the promoters must summon such jury within 21 days after receiving it, and if the claimant before they have issued their warrant, desire a special jury under section 54, such later notice does not extend the time, but the warrant to summon must issue within 21 days from receipt of the first notice, otherwise an action will lie for the amount claimed. *Glyn v. Aberdare Railway Company*, 28 L. J. C. P. 271.

"A jury for settling the same in the manner herein provided."—The provisions here referred to are those contained in sections 38—57, and these provisions in so far as they are applicable, apply to assessments by jury under this section. *Richardson v. South Eastern Railway Company*, 21 L. J. C. P. 22. Section 38 which requires the promoters to give notice before issuing their warrant to a jury, however, does not apply. *Railston v. York, Newcastle, and Berwick Railway Company*, 15 Q. B. 404, and see notes to sections 38 and 51, *ante*, pp. 84, 101.

Section 51 which provides how the costs shall be borne has been held to be applicable to assessments before juries under this section (*Richardson v. South Eastern Railway Company*, 21 L. J. C. P. 22; *Hayward v. Metropolitan Railway Company*, 33 L. J. Q. B. 73), and the time limited for making an offer under that section, in cases under section 63, is the time up to giving the ten days' notice of the date fixed for the inquiry provided by section 46. *Hayward v. Metropolitan Railway Company*, 33 L. J. Q. B. 73, and see section 51, note "The sum previously offered," *ante*, p. 100.

If a claimant has no claim, he is entitled to no costs if he require the promoters to have his claim assessed under section 68. *Todd v. Metropolitan Railway Company*, 19 W. R. 720; *Sharpe v. Metropolitan Railway Company*, 4 Q. B. D. 645, p. 652; cf., *Capell v. Great Western Railway Company*, 9 Q. B. D. 459.

Generally as to settling the amount of compensation by jury, see the notes to sections 38—57. **Sect. 68.**

"By Action."—When a claim is made against promoters they are bound to proceed under this section, otherwise an action will lie against them for the full amount claimed. Under the old system of pleading it was held that to such an action they may not plead that "the claim was not a *bond fide* claim within the statute, but in fraud of the defendants, and without reasonable cause," but it would appear that they might have set out the facts on which they relied to show that it was fraudulent. *Hooper v. The Bristol Port Railway and Pier Company*, 35 L. J. (N.S.) 299, and see note thereto.

As the assessment merely determines the amount, all questions of title and right to compensation may be raised by defence to such an action. See section 23, note "The same shall be so settled," *ante*, p. 57.

PRINCIPLES OF COMPENSATION FOR INJURIOUS AFFECTION OF LAND.

General Rules.—In the notes to section 63 are discussed the principles for determining the compensation for injuriously affecting land which has been held with the land taken. Here, it is proposed to discuss the principles of compensation for injuriously affecting lands in all other cases. In the absence of express provision in the special Act it is clear that compensation can be recovered, although no part of the land has been taken. *Metropolitan Board of Works v. McCarthy*, L. R. 7 H. L. 243; *Caledonian Railway Company v. Walker's Trustees*, 7 A. C. 259, and cases cited in this note. That the same principles apply whether land has been taken or not, provided the land taken be not held with the land not taken, is also clear. *Caledonian Railway Company v. Ogilvy*, 2 Macq. 229; *City of Glasgow Union Railway Company v. Hunter*, L. R. 2 H. L. (Sc.) 78, and see per Lord CHELMSFORD in *Buccleuch v. Metropolitan Board of Works*, L. R. 5 H. L. 418, p. 458, and per Lord WATSON in *Conquer Essex v. Acton Local Board*, 14 A. C. 153, p. 166.

The principles herein stated apply equally to cases of compensation under sections 6 and 16 of the Railways Clauses Act, 1845, *post* (*Ricket v. Metropolitan Railway Company*, L. R. 2 H. L. 175; *Hammersmith Railway Company v. Brand*, L. R. 4 H. L. 171), to cases under sections 6 and 12 of the Waterworks Clauses Act, 1847 (*post*, *New River Company v. Johnson*, 1 E. & E. 435, and see per BLACKBURN, J., p. 446), and also to cases under section 308 of the Public Health Act, 1875. Cf., *Hall v. Mayor of Bristol*, L. R. 2 C.P. 322; *Brierley Hill Local Board v. Pearsall*, 9 A. C. 595. The same principles will be found to apply to nearly all undertakings carried out under public statutes. Modifications will, however, be found under the mining sections of the Waterworks Clauses Act, 1847, *post*, more particularly section 27, and see also the Housing of the Working Classes Act, 1890, s. 21, *post*.

There are four propositions which have been laid down by the House of Lords for determining whether a right of compensation exists under these statutes:—

I. *The damage caused must be by reason of what has been authorised by the Legislature and not from other Acts.*

If there is wrong done which is not authorised by the powers conferred by the Legislature, the common law right of action remains. The statutes only give compensation for losses sustained in consequence of what the promoters of an undertaking may do lawfully under their

Sect. 68. statutory powers, and, that for anything done in excess of these powers or contrary to what the Legislature, in conferring these powers, has commanded, the proper remedy is by action. *Caledonian Railway Company v. Colt*, 3 Macq. 833; *Imperial Gas Light and Coke Company v. Broadbent*, 7 H. L. Cas. 600.

II. The damage must arise from that which would, if done without the authority of the Legislature, have given rise to a cause of action.

This proposition was first clearly enunciated by KEATING, J., as counsel in *Glover v. North Staffordshire Railway Company*, 16 Q. B. 912, 923, and adopted by Lord CAMPBELL in that case and in *Re Penny and South Eastern Railway Company* 7 E. & B. 660. It was discussed in the House of Lords in *Ricket v. Metropolitan Railway Company*, L. R. 2 H. L. 175, where it was disputed by Lord WESTBURY, but was affirmed by the majority, and has been followed by the House of Lords in subsequent cases. *Metropolitan Board of Works v. McCarthy*, L. R. 7 H. L. 243; *Caledonian Railway Company v. Walker's Trustees*, 7 A. C. 259; *Fleming v. Newport Railway Company*, 8 A. C. 265.

The mere fear of injury which, if it happened would give a cause of action, gives no right to compensation. The statute gives no claim *quia timet* in respect of injury to be sustained in the future. *Reg. v. Poulter*, 20 Q. B. D. 132.

It follows, therefore, that the general law of *tort* is applicable up to the limits imposed by propositions III. and IV., but from these it will be seen that it is not every Act which would have given a right of action at common law that will give a ground for compensation. The rule as to remoteness of damage is also applicable. *S. C. and Clarke v. Wandsworth Local Board*, 17 L. T. (N.S.) 549.

III. The damage must arise from a physical interference with some right, public or private, which the owners or occupiers of property are by law entitled to make use of, in connection with such property, and which gives an additional market value to such property apart from the uses to which any particular owner or occupier might put it.

This principle has been evolved as the result of a number of decisions. It was suggested by THESIGER, L.J., acting as counsel in the *Metropolitan Board of Works v. McCarthy*, and was approved by Lord CAIRNS in his judgment, L. R. 7 H. L. 243, p. 253. Lord CHELMSFORD also accepted it with the qualification that where the right which the owner of the house is entitled to exercise is one which he possesses in common with the public, there must be something peculiar to the right in its connection with the house to distinguish it from that which is enjoyed by the rest of the world (p. 256). Lord SELBORNE in *Caledonian Railway Company v. Walker's Trustees*, 7 A. C. 259, p. 276, stated the law on this point in the following propositions:—

1. When a right of action, which would have existed if the work in respect of which compensation is claimed had not been authorised by parliament, would have been merely personal without reference to land or its incidents, compensation is not due under the acts.
2. Loss of trade or custom by reason of a work not otherwise directly affecting the house or land in or upon which a trade has been carried on, or any right properly incident thereto is not by itself a proper subject for compensation.

3. The obstruction by the execution of the work of a man's direct access to his house or land, whether such access be by a public road or by a private way is a proper subject for compensation. **Sect. 68.**

See *Caledonian Railway Company v. Ogilvy*, 2 Macq. 229; *Ricket v. Metropolitan Board of Works*, L. R. 2 H. L. 175; *Metropolitan Board of Works v. McCarthy*, L. R. 7 H. L. 243; and see per WILLES, J., in *Beckett v. Midland Railway Company*, L. R. 3 C. P. 82, p. 94.

IV. The damage must arise from the execution of the works and not by their subsequent use.

This proposition was finally established in the House of Lords in the case of *The Hammersmith Railway Company v. Brand*, L. R. 4 H. L. 171, after much variance of judicial opinion. It affirmed *R. v. Pease*, 4 B. & Ad. 30, and *Vaughan v. Taff Vale Railway Company*, 5 H. & N. 679, and has been recognised as settled law in several subsequent judgments in the House of Lords. *Caledonian Railway Company v. Walker's Trustees*, 7 A. C. 259; *London and Brighton Railway Company v. Truman*, 11 A. C. 45; *Cowper Essex v. Acton Local Board*, 14 A. C. 153. It follows, therefore, that in order to determine whether or not compensation can be awarded, that the question to be considered is whether there would have been any injury if the works had been executed and then left unused.

The general result of these propositions is, that under the Lands Clauses Acts and the special Acts incorporating them compensation will be given when land or any right properly incident thereto has been injured by the proper execution of works authorised by the Legislature and not otherwise. If injury is caused otherwise than to land, or to land but only by the use of the works, there is no remedy; if it is caused by acts not authorised or by negligence or other improper conduct of the promoters either in the construction of the works or in their use the remedy is by action.

These principles are illustrated in the cases cited, *infra*, which have been decided on questions of compensation.

CASES WHERE COMPENSATION NOT RECOVERABLE.

I. **Remedy by Action.**—In accordance with the first proposition, it was held in the following cases that no compensation could be recovered because the act causing the injury was not authorised, but that the remedy was by action:—

Improper Construction of Works.—If the promoters construct their works in such a negligent or improper manner that damage results to adjoining landowners, the remedy is by action and not for injurious affecting. Thus, if a railway company construct an embankment so carelessly and without proper drainage, so that adjoining lands are flooded, the remedy is by action. *Brine v. Great Western Railway Company*, 31 L. J. Q. B. 101; *Lawrence v. Great Northern Railway Company*, 20 L. J. Q. B. 293.

Similarly, if in the course of making a sewer an adjoining owner is injured and the jury find that it was due to negligence, the remedy is by action. *Clothier v. Webster*, 31 L. J. C. P. 317.

Promoters of public undertakings are bound to exercise the powers given to them in derogation of individual rights with moderation and discretion and not negligently; thus where a railway company in executing authorised works took insufficient precautions to secure the

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Where a railway company are by their act required to make a branch railway, in place of one disturbed by the execution of their works, the proper remedy in case of neglect is by action. *Caledonian Railway Company v. Colt*, 3 Macq. 833.

Improper Carrying on of the Works.—Nuisance.—A nuisance caused by the improper or negligent carrying on of the works gives a cause of action. Thus, where a waterworks company were empowered to make a reservoir for storage of water during floods to compensate millowners for other water taken, and such reservoir was made but was used in such a way as to foul the stream, it was held that this was not authorised, and, therefore, that no compensation would be claimed, but that the company might be restrained by injunction. *Cloves v. Staffordshire Potteries Waterworks Company*, 8 Ch. 125; *Geddis v. Proprietors of Bann Reservoir*, 3 A. C. 430; *Freemantle v. London and North Western Railway Company*, 10 C. B. (N.S.) 89. For a case of fouling of stream by drainage under the Metropolitan Local Management Act (18 & 19 Vict. c. 120), where it was held that there was no right to compensation. See *Cator v. Lewisham Board of Works*, 34 L. J. Q. B. 74; and for other cases of fouling streams, see *Young v. Bankier Distillery* (1893), A. C. 191; *McIntyre v. Gavin* (1893), A. C. 268; for blocking a drain, *Blagrove v. Bristol Waterworks Company*, 1 H. & N. 369; and for a case of nuisance from a gas retort, *Imperial Gas Light and Coke Company v. Broadbent*, 7 H. L. Cas. 600, and see *Attorney-General v. Gas Light and Coke Company*, 7 Ch. D. 217. If a water main burst negligence must be shown in order to recover damages. *Green v. Chelsea Waterworks Company*, 70 L. T. 547.

Where a local board subtract from a river a large quantity of water for the purpose of flushing a sewer so that a mill below has not enough water to continue working, this was held to be beyond their powers, and that the millowner was not injuriously affected so as to recover compensation, but his remedy was by action. *Reg. v. Darlington Local Board*, 35 L. J. Q. B. 45, and see note "Other Nuisances," p. 136.

II. Damage must be actionable.—In the following cases it has been held that no compensation could be recovered, because no action would have lain according to the *second* proposition, *supra* :—

Damage by Natural Use of Land taken.—It is a general rule of law that the owner of one piece of land has a right to use it in the natural course of user, unless in so doing he interferes with some right created either by law or contract. See *Wilson v. Waddell*, 2 A. C. 95, 99. Promoters of undertakings have similarly the right to use the land according to the natural course of user, and any loss, damage, or inconvenience caused by such user, even during the construction of the work, gives no ground for compensation.

Pulling down Houses.—Thus, they may pull down the houses thereon, and no person having business premises in the neighbourhood will be entitled to compensation for loss of profits caused thereby. *Reg. v. Vaughan*, L. R. 4 Q. B. 190; and see also *R. v. London Dock Company*, 5 A. & E. 163, under a private Act. Promoters who have purchased a house may also take it down and rebuild it, and may make use of the

party walls of adjoining houses under local building Acts, and will not be liable to pay compensation for loss of trade or inconvenience caused thereby. *R. v. Hungerford Market Company; Ex parte Yeates*, 1 A. & E. 668, and *Ex parte Eyre*, 1 A. & E. 676. Sect. 68.

Riparian Rights.—Similarly, as a riparian owner may remove shoals out of the bed of a river and other casual obstructions so also may promoters, and no ground of compensation will exist if by reason thereof a person's lands are more easily flooded. *Rhodes v. Airedale Drainage Commissioners*, 1 C. P. D. 380, 402.

Light and Prospect.—So promoters may raise an embankment from which an adjoining owner's premises may be overlooked, and his privacy destroyed. *R. v. Penny and South Eastern Railway Company*, 7 E. & B. 660. It would appear that the vibration caused by ballast trains during the construction of the works is a ground of compensation. S. C. 672. Promoters may put up buildings which will interfere with an adjoining owner's view, and if the adjoining owner has not acquired an easement of light by law or contract no compensation can be recovered. See *Bett v. Imperial Gas Company*, 2 Ch. 158; *Eagle v. Charing Cross Railway Company*, L. R. 2 C. P. 638. If, however, part of an owner's easement of light has been destroyed, it has been held that compensation may be given for injury to other lights, not ancient lights, which were obstructed by the same building. One of the grounds of this decision was that this would be the natural consequence of the tort; the other ground was that the principle laid down in *Buccleuch v. Metropolitan Board of Works*, L. R. 5 H. L. 418, and *Cowper Essex v. Acton Local Board*, 14 A. C. 153, was applicable, which would appear to be at least doubtful, as to which principle see note to section 63. *Re London, Tilbury and Southend Railway Company, and the Trustees of Gower's Walk Schools*, 24 Q. B. D. 326.

Support.—On the same principle persons cannot claim compensation for loss of support adjacent or subjacent to lands upon which buildings have been erected unless the right has been acquired by statute, grant or by twenty years' user, although every landowner has a right to the lateral support of his neighbour's land, so far as it is necessary to sustain the soil in its natural state. For the general law, see *Bonomi v. Backhouse*, 9 H. L. Cas. 503; *Dalton v. Angus*, 6 A. C. 740.

Thus, where a railway company dug into land not contiguous but near to a sewer, so that the sewer lost its lateral support and burst, and the sewer not having been made for twenty years, it was held that the company were not bound to pay compensation as no right to lateral support had been acquired for the sewer, either by use or by the Acts empowering the local authority to make it. *Metropolitan Board of Works v. Metropolitan Railway Company*, L. R. 3 C. P. 612; L. R. 4 C. P. 192; and see as to this case, *Roderick v. Acton Local Board*, 5 Ch. D. 328, 332. Of course, if such a right has been acquired compensation must be awarded. See *infra*, p. 140, and as to support from mines, see notes to sections 77—85 of the Railways Clauses Act, 1845, *post*.

Intercepting Water.—A person who owns land may dig therein and apply all that is there found to his own purposes, and if in the exercise of such right he intercepts or drains off the water which has collected, or which might collect from underground springs in his neighbour's well, this inconvenience to his neighbour cannot be a ground for compensation as it would not form a cause of action. *New River Company v. Johnson*, 29 L. J. M. C. 93, and as to the general law, see *Chasemore v. Richards*, 7 H. L. Cas. 282, and *Acton v. Blundell*, 12 M. & W. 324.

Sect. 68. Where the effect was to cut off water which accumulated from springs in a pond which overflowed and made a rivulet and supplied other ponds, it was held that there was no ground for compensation even for the water after it had risen. *Reg. v. Metropolitan Board of Works*, 32 L. J. Q. B. 105. On this principle an owner may drain away water supplying water to a public waterworks. *Bradford Corporation v. Pickles* (1895), 1 Ch. 145.

Cases of Alleged Right.—Ferry.—Where a ferry was alleged to be interfered with by the building of a bridge half a mile off, it was held that the right of ferry was to have the exclusive ferrying of goods and passengers from the one side to the other in the locality of the ferry, and that the creation of new highways and the taking of persons and goods across from one side of the river to these highways, whether by boat or bridge, was no infringement. *Hopkins v. Great Northern Railway Company*, 2 Q. B. D. 224.

Right of Way.—Where a person acquired a house by feu contract in a building estate with right to use such streets as might be laid down and opened, according to a building plan, which the superior landlord had the option and power to vary, and a railway company took part of the land of the superior landlord, on which no streets had been opened, but by their works blocked up a proposed street, it was held that as the superior landlord was under no obligation to continue the building plan, and as the roads had not been opened, the owner of the house would have had no right of action against the landlord or the railway as his successors, and, therefore, he had no right to compensation. *Fleming v. Newport Railway Company*, 8 A. C. 265.

When a public right is invaded, no individual has a cause of action unless he can show he has suffered particular damage more than that of his fellow-citizens, see *infra*, cases on "Access to Premises," p. 137.

Where a local board raised the level of a highway which had subsided, owing to minerals below having been removed, the owners of houses on the highway were held to have no right of compensation as they had no right to have the road maintained at the level to which it had sunk. *Burgess v. Northwich Local Board*, 6 Q. B. D. 264.

Temporary Obstruction of Public Pathway.—If a local board for the purposes of carrying out public works construct a hoarding and obstruct temporarily the traffic, but not for an unreasonable time, no action will lie, and, therefore, such acts form no ground for compensation. *Herring v. Metropolitan Board of Works*, 19 C. B. (N.S.) 510.

But a temporary obstruction may in certain cases give rise to a cause of action, and, if the land or premises are affected, to compensation. Per WILLES, J., in *Beckett v. Midland Railway Company*, L. R. 3 C. P. 82, p. 97; *Fritz v. Hobson*, 14 Ch. D. 542. The dictum of CHELMSFORD, L.C., in *Ricket v. Metropolitan Board of Works*, L. R. 2 H. L. 175, 189, to the contrary has not been accepted. See *Ford v. Metropolitan Railway Company*, 17 Q. B. D. 12, pp. 20, 24 and 28.

Access to Sewer.—Where a local authority had laid a sewer through land purchased by a railway company, but not then used, and the railway company afterwards made an embankment thereon and made the access to the sewer more difficult, it was held that the only right that the local authority had was such access as was reasonably necessary to repair the sewer, and, as that had not been prevented, but only made less easy and convenient, the local authority were not entitled to compensation. *Mayor of Birkenhead v. London and North Western Railway Company*, 15 Q. B. D. 572.

III. Injury must be to land.—In the following cases it was held **Sect. 68.** that no compensation could be recovered according to the *third* proposition, because the injury was not due to a physical interference with land or some incident thereto :—

Level Crossing.—Personal inconvenience caused by a level crossing near a house gives no right of compensation if the property itself is not depreciated in value. *Caledonian Railway Company v. Ogilvy*, 2 Macq. 229, discussed in *Metropolitan Board of Works v. McCarthy*, L. R. 7 H. L. 243, and *Caledonian Railway Company v. Walker's Trustees*, 7 A. C. 259, and followed in *Wood v. Stourbridge Railway Company*, 16 C. B. (N.S.) 222.

Loss of Profits.—Where a publichouse was situated by the side of a public footway, and a railway company in exercise of their powers obstructed streets leading to this footway so as to make the access to the publichouse inconvenient, and the occupier complained that he had suffered loss of business in consequence, it was held that he was not entitled to compensation. *Ricket v. Metropolitan Railway Company*, L. R. 2 H. L. 175; *R. v. London Dock Company*, 5 Ad. & E. 163, overruling *Senior v. Metropolitan Railway Company*, 2 H. & C. 258. The grounds upon which *Ricket's* case was decided were various and have not been altogether accepted, but as explained in *Metropolitan Railway Company v. McCarthy*, L. R. 7 H. L. 243, p. 256, and *Caledonian Railway Company v. Walker's Trustees*, 7 A. C. 259, the accepted ground of the decision was that there was no injury to the house itself. Where a cellar of a house had been interfered with and loss of profit had also been caused by diversion of traffic, the latter loss was held to afford no ground for compensation. *Bigg v. Corporation of London*, 15 Eq. 376. As to a case where the access has been obstructed, so as to affect the house and thereby diminish the trade, see *Wadham v. North Eastern Railway Company*, 14 Q. B. D. 747; 16 *ib.* 227. For a case under the *Metropolis Local Management Act* (18 & 19 Vict. c. 120), see *Herring v. Metropolitan Board of Works*, 19 C. B. (N.S.) 510.

Where the occupier of premises near the Thames had been in the habit of using public rights of drawing water and bringing barges to a draw dock, in connection with his business, and he was obstructed in the enjoyment of these rights by the works of an embankment and in consequence his business suffered, it was held that as there was no right or easement appurtenant to the claimant's premises in respect thereof, and the injury being personal, there was no ground for compensation. *Reg. v. Metropolitan Board of Works*, L. R. 4 Q. B. 358. In an old case under a private Act it was held that no compensation was due to the owners of a brewery for a loss arising to them in their business from the deterioration of the water of a public river from which the brewery had been supplied by pipes, as the use of the water was a right common to all the King's subjects. *R. v. Bristol Dock Company*, 12 East 429.

See *infra*, note "Access to Premises."

IV. Damage must be caused by the construction.—In accordance with the *fourth* proposition, it has been held in the following cases that no compensation could be recovered because the act causing the injury was caused by the user of the works and not by the construction :—

Vibration.—**Smoke.**—If a house adjoining a railway is injured by vibration, noise and smoke caused by passing trains, after the construction of the works, there is no compensation due, but for vibration during the construction of the works from the same cause compensation

Sect. 68. would appear to be due. *Hammersmith Railway Company v. Brand*, L. R. 4 H. L. 171; *Re Penny*, 7 E. & B. 660.

The case of *London and North Western Railway Company v. Bradley*, 3 Mac. & G. 336, as to this point is overruled, and if beer in vaults adjoining a railway turn sour in consequence of the vibration of passing trains there is no right to compensation. See per BLACKBURN, J., in *Hammersmith Railway Company v. Brand*, L. R. 4 H. L., p. 197. Annoyance by noise and smoke by passing trains, if not due to improper working, gives no ground for compensation. *City of Glasgow Union Railway Company v. Hunter*, L. R. 2 H. L. (Sc.) 78.

Where a railway company were authorised to construct an underground railway, and in so doing purchased some land at the back of a dwelling house and made a tunnel through such ground and an aperture in such ground for the purpose of ventilating the tunnel, and some years later enlarged the aperture, the effect of which was that the quantity of smoke, steam and foul air coming from the railway was largely increased and the house depreciated in value, the lessee of the house, who became lessee after the original construction, but before the alteration, was held not to be entitled to compensation as the damage was caused by the use of the works and not by their construction. *Attorney-General v. Metropolitan Railway Company* [1894], 1 Q. B. 384.

Other Nuisances.—Annoyance caused by trains passing a level crossing by reason of frightening horses and causing delay gives no ground for compensation. *Caledonian Railway Company v. Ogilvy*, 2 Macq. 229, and see this case discussed in *Caledonian Railway Company v. Walker's Trustees*, 7 A. C. 259.

Where a railway company were indicted for a nuisance by frightening horses by use of locomotives on a railway which ran close to a highway, it was held that the company were authorised to do so by statute. *R. v. Pease*, 4 B. & Ad. 30.

A railway company may also purchase land and turn the same into a cattle yard for the purposes of their business, and no action will lie against them if a nuisance is caused to adjoining owners by reason of the noise of the cattle and drovers, if the business is not carried on negligently, as such yards are necessary and incidental to the authorised use of the railway for cattle traffic. *London and Brighton Railway Company v. Truman*, 11 A. C. 45.

A railway company authorised to use locomotive engines is not responsible for damage from fire occasioned by sparks emitted from an engine running on their railway if they have taken every precaution in their power, and adopted every means science can suggest, to prevent injury from fire and are guilty of no negligence. *Vaughan v. Taff Railway Company*, 5 H. & N. 679.

Injury to a Ferry.—A railway company, authorised to do so, constructed across a river, half a mile above a ferry, a railway bridge and a foot bridge, the latter being used by persons going to the railway station and also to other places. The traffic across the ferry in consequence fell off, and the ferry was given up. It was held that compensation could not be recovered on the ground that the injury to the ferry was occasioned not by the construction, but by the use of the works. *Hopkins v. Great Northern Railway Company*, 2 Q. B. D. 224, overruling *Reg. v. Cambrian Railway Company*, L. R. 6 Q. B. 422. In the above case it was also discussed whether the erection of a bridge was a disturbance of the right of ferry, and in this case it was held that as it connected different highways it was not such a disturbance.

CASES WHERE COMPENSATION RECOVERABLE

Sect. 68.

Access to Premises.—The obstruction by the execution of the works of a man's direct access to his house or land, whether such access be by a public road or by a private way, is a proper subject for compensation, if the value of the house or land has been depreciated.

By Public Highway.—If a public right is invaded, an individual must show that he has suffered damage more than or beyond that of his fellow citizens by reason of the interference with the public right, otherwise he will have no cause of action. *Dobson v. Blackmore*, 9 Q. B. 991; *Iverson v. Moore*, 1 Salk. 15; and see per Lord PENZANCE in *Metropolitan Board of Works v. McCarthy*, L. R. 7 H. L. 243, p. 263; *Cook v. Mayor of Bath*, L. R. 6 Eq. 177; *Fritz v. Hobson*, 14 Ch. D. 542. In order that an action may lie for damage for right of access by a public road, the damage must be proximate, and not remote or indefinite. *Caledonian Railway Company v. Walker's Trustees*, 7 A. C. 259.

Thus, where the lessee of a house in close proximity to a draw dock which opened into the Thames, was in the habit of constantly using the dock, but his right was only as one of the public, and the dock was entirely destroyed by the making of the Thames Embankment, and his premises in consequence were permanently damaged and diminished in value in their then condition and with reference to the uses to which any owner might put them, it was held that he was entitled to compensation. *Metropolitan Board of Works v. McCarthy*, L. R. 7 H. L. 243; approving *Chamberlain v. West London Railway Company*, 2 B. & S. 605; and *Beckett v. Midland Railway Company*, L. R. 3 C. P. 82, *infra*, and distinguishing *Reg. v. Metropolitan Board of Works*, L. R. 4 Q. B. 358, *supra*, p. 135.

A spanning mill stood 90 yards from and parallel to an important main thoroughfare in Glasgow. Public highways, which were level, afforded direct and easy access from both sides of the premises to the main thoroughfare. A railway company cut off entirely one access and substituted for it a circuitous road with steep gradients; the other access was also made less convenient. The mill-owner was held to be entitled to compensation. *Caledonian Railway Company v. Walker's Trustees*, 7 A. C. 259; and see *Wood v. Stourbridge Railway Company*, 16 C. B. (x.s.) 222.

The lessee of four houses standing on a highway, and of eight others in course of erection for the purpose of dwelling-houses, on a new road at right angles to the highway, was held entitled to compensation from a railway company who had obstructed the highway and rendered the access less convenient and made the houses less valuable. *Chamberlain v. West End and Crystal Palace Railway Company*, 2 B. & S. 605, 617.

Where a house fronting on a public highway is depreciated in value by a railway company erecting an embankment on a portion of the highway opposite thereto, and thereby narrowing the road from 50 to 33 feet, and impeding the approach and access of light and air, the owner was held entitled to compensation. *Beckett v. Midland Railway Company*, L. R. 3 C. P. 82.

Where a local board raised the level of a street so as to obstruct the entrance to a house abutting thereon and to render the access to the doorway dangerous and inconvenient, the owner was held entitled to compensation under the Public Health Act, 1848, s. 144. *Reg. v. Wallasey Local Board*, L. R. 4 Q. B. 351.

And the same principle was applied to a similar state of facts under the Lands Clauses Acts where the level of a footway in a street had

Sect. 68. been lowered. *Reg. v. Vestry of St. Luke's, Chelsea*, L. R. 7 Q. B. 148; and see also *Reg. v. Eastern Counties Railway Company*, 2 Q. B. 347.

Where a railway company lowered the level of a highway leaving a cottage and land belonging to an owner on the edge of a precipice 7 feet high, so that access could only be got by a ladder, the owner was held to be entitled to compensation. *Moore v. Great Southern and Western Railway Company*, 10 Ir. C. L. 46; and for another similar case where the road was raised, see *Tuohey v. Great Southern and Western Railway Company*, 10 Ir. C. L. 98; and see *Re McMullen and Ulster Railway Company*, Ir. Reserved Cas. 36.

Where the Metropolitan Board of Works built a new bridge across a river and made a new highway to the bridge, and closed the old bridge so that the old highway ended at the river side, and shops in that street became, in consequence, less valuable, it was held that the premises were made less valuable, having regard to *all* the purposes for which such a house might be used, and that there was a right to compensation. *Metropolitan Board of Works v. Howard*, 2 "Times" L. R. 732 (H. L.).

Access to the Sea.—This also is a subject of compensation when a railway company erect an embankment along the foreshore and cut off the access to the sea from a house. *Reg. v. Rynd*, 16 Ir. C. L. 29; *Attorney-General of the Strait Settlements v. Wemyss*, 13 A. C. 192, p. 196.

Access to River.—In a case under a different Act it was held that the right of navigating a public river, connected with an exclusive access to and from a particular wharf, constitutes a form of enjoyment of the land and of the river in connection with the land, the disturbance of which may be vindicated in damages by an action. *Lyon v. Fishmongers' Company*, 1 A. C. 662; *North Shore Railway Company v. Pion*, 14 A. C. 612, applying same principle in Canadian law.

Such a right of access from a river would give, if obstructed, a claim for compensation. *Macey v. Metropolitan Board of Works*, 33 L. J. Ch. 377; *Buccleuch v. Metropolitan Board of Works*, L. R. 5 H. L. 410.

Private Way.—Private rights of way and easements of way appurtenant to property, and such rights as would pass on a demise as continuous and apparent easements, are all subjects of compensation.

Thus, where the owner of a farm had a right of way from the farm over various closes to the high road, and a railway company constructed a level crossing over this way and erected gates, the owner was held to be entitled to compensation. *Glover v. North Staffordshire Railway Company*, 16 Q. B. 912.

The lessees of three rooms in a back block of a house had access thereto through a hall or vestibule. A railway company took down the front block and removed the hall. By reason of the injury to the access the value of the rooms was lessened, but there was no demise of the right of way through the hall, nor was it a way of necessity, but was in the nature of a continuous and apparent easement, and the Court held that it was a subject for compensation. *Ford v. Metropolitan Railway Companies*, 17 Q. B. D. 12.

A vendor of property granted a plot of land, together with all streets, ways, easements, and advantages, and delineated on the conveyance a plan showing the piece of land at the corner of two intersecting streets. These streets had not been made, but the soil thereof belonged to the vendor, and was on the same level as the plot. He was held to be liable to the purchaser to lay out these streets, and a railway company who

took part of the land and blocked the access to one of these streets was held bound to compensate the purchaser for injuriously affecting his land by blocking this right of way. *Furness Railway Company v. Cumberland Co-operative Building Society*, 52 L. T. 144; cf. *Fleming v. Newport Railway Company*, 8 App. Cas. 265, where no such right was held to exist, *supra*, p. 134; see also *Wood v. Stourbridge Railway Company*, 16 C. B. (N.S.) 222. Sect. 68.

Easements of Light.—These easements, if shown to exist either by prescription or grant, are clearly a subject of compensation. Thus, where premises were rendered less convenient and suitable for the requirements of the trade carried on in them by reason of the diminution of light, the lessee was held entitled to compensation. The report does not say that the lessee had an easement, but *BOVILL, C.J.*, says that upon the facts it is clear that an action might have been maintained. *Eagle v. Charing Cross Railway Company*, L. R. 2 Q. B. 638, 644.

Under the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), it was held that a school board interfering with ancient lights must pay compensation. *Clark v. London School Board*, L. R. 9 Ch. 120.

Compensation was also granted for obstruction of light in *Reg. v. Poulter*, 20 Q. B. D. 132, and *Re London, Tilbury, and Southend Railway Company v. Gonzer's Walk Schools*, 24 Q. B. D. 326.

As to light, air, and prospect where a foreshore is taken, see *Reg. v. Rynd*, 16 Ir. C. L. 29.

For a case under a street improvement act, *Wigram v. Fryer*, 38 Ch. D. 87.

Ferry.—A ferry appurtenant to land is a proper subject for compensation, and if the works of a railway block up the access to the river at one side of the ferry the land is injuriously affected. *Reg. v. Great Northern Railway Company*, 14 Q. B. 25; Cf. *Hopkins v. Great Northern Railway Company*, 2 Q. B. D. 224, cited p. 136, *supra*.

Flow of Water.—This right of riparian owners is a subject of compensation if the flow is interrupted. Thus, where the flow was diminished, the lands were held to be injuriously affected. *Mortimer v. South Wales Railway Company*, 1 E. & E. 375. Under a private Act where a company, by altering a weir in a river, raised the level of the water so that the working of the mill was obstructed, the millowner was held entitled to compensation. *R. v. Nottingham Old Waterworks Company*, 6 A. & E. 355. Where the owner was deprived of the flow altogether by being cut off from it, see *Duke of Buccleuch v. Metropolitan Board of Works*, L. R. 5 H. L. 410. For the taking and using a stream under the Waterworks Clauses Act, 1847 (see *post*), the procedure is the same as for taking lands. *Ferrand v. Corporation of Bradford*, 21 Beav. 412, and see notes to that statute, *post*. Where only part of the water is diverted, the owner is injuriously affected, the procedure is under section 68. *Bush v. Trowbridge Waterworks Company*, 10 Ch. 459; *Stone v. Mayor of Yeovil*, 2 C. P. D. 99. And if part of the water is taken but the bulk of it returned, riparian owners below where it is returned can only claim for the actual diminution. *Page v. Kettering Waterworks Company*, 8 "Times" L. R. 228.

Sporting Rights.—It is not particularly clear as to whether the right to shoot game upon land is merely a license or an interest in land. If

Sect. 68. the right is coupled with a right to take away the whole or part of the game shot, then it is an interest in land, being a profit *d prendre*. *Webber v. Lee*, 9 Q. B. D. 315; *Wickham v. Hawker*, 7 M. & W. 63. It should in such a case be created by deed (*Bird v. Higginson*, 6 A. & E. 824), but if by parol, coupled with exercise of the right, equity would enforce it. *Pattison v. Gifford*, 18 Eq. 250.

It has, however, been held that a person who had a right of shooting over land by an agreement not under seal had not such an interest in land as to entitle him to compensation for injuriously affecting his right from a railway company who had constructed a railway across it. *Bird v. Great Eastern Railway Company*, 34 L. J. C. P. 366. This decision was mainly based on the ground that the claimant showed no more than a license.

Support.—If an Act of Parliament imposes an easement upon a landowner this is ground for compensation. Thus, the Public Health Act, 1875, has been held to impose upon landowners through whose land a sewer runs a duty to preserve to such sewer adjacent support, and, therefore, gives them a right to immediate compensation. *In re Corporation of Dudley*, 8 Q. B. D. 86; see *North London Railway Company v. Metropolitan Board of Works*, 28 L. J. Ch. 909. As to support from mines, see the Railways Clauses Act, 1845, s. 79, *post*, and note "Support," and see the Waterworks Clauses Act, 1847, ss. 18—27, which, as regards sewers, are incorporated in the Public Health Act, 1875, by the Public Health Act, 1875, Amendment Act, 1883.

Flooding.—If by the proper execution of the works an owner's land is occasionally flooded, his remedy is for injurious affection under section 68. *Ware v. Regent's Canal Company*, per Lord CHELMSFORD, 2 De G. & J. 212, 227.

Tithes consisted of the tenth part of the produce, animal and vegetable, of land. By the Tithe Act, 1836 (6 & 7 Will. 4, c. 71), which has been amended by numerous statutes, provision was made for commuting all tithes into tithe rentcharges. In an old case before this Commutation Act, it was held that a titheowner was not entitled to compensation where titheable land was taken for purposes of navigation and covered with water on the ground that the tithe owner has no interest in the land, but his interest accrues when the tithe arises, and the owner of the soil may, if he please, use the land in such a manner that no tithe may arise. *R. v. Commissioners of the Nene Outfall*, 9 B. & C. 875 (1829).

The Commutation Act, however, does not alter the nature of the tithe, and although it provides for a certain sum being made payable instead of the tithes, which sum is to be "in the nature of a rentcharge issuing out of the lands charged therewith," this does not create a rentcharge on the inheritance, but merely gives tithe owners the right to take out of the produce of the land the proportion mentioned in the Act. *Bailey v. Badham*, 30 Ch. D. 84. It might, on that reasoning, appear doubtful whether sections 115—118 of this Act, which provide for the compensation of rentcharges are applicable to the case of tithe rentcharges. By 41 & 42 Vict. c. 42, it is provided that "in all cases where land charged with rentcharge in lieu of tithes is taken" for the purpose of building or extending churches, schools under the Elementary Education Act, cemeteries, public buildings or artisans' dwellings, the tithe shall be redeemed for a sum of money twenty-five times the amount of the rentcharge. Section 1, *post*.

Tithes imposed on the inhabitants of the city of London under **Sect. 68.** 37 Hen. 8, c. 12, were held to be annuities or periodical sums of money charged upon land. *Payne v. Esdaile*, 13 A. C. 613; and see *Esdaile v. Esdaile*, 54 L. T. 637.

For cases of compensation under 37 Hen. 8, c. 12, where the special Act made provision that they should indemnify the owner of the tithes. See *Esdaile v. Metropolitan and District Railway Company*, 46 J. P. 103; *London and Blackwall Railway Company v. Letts*, 3 H. L. Cas. 470.

The Measure of Compensation.—The general rules as regards the measure of damages in tort are applicable to determine the amount of compensation for injurious affection. The damage must be the natural and probable consequence of the act: it must be the proximate and not remote. *Caledonian Railway Company v. Walker's Trustees*, 7 A. C. 259; *Ridcliff v. Metropolitan Railway Company*, L. R. 2 H. L. 175.

Thus, a local board, for the purpose of making a drain, entered upon ground where a seedsman had an experimental garden, in which he sowed small quantities of the seeds he sold by way of sample from each lot of seed he had in stock, and, according to the results, was able to warrant each parcel sold, and, in consequence, get a higher price. The plants in the garden were grubbed up and so treated that they could not be identified with the seed in bulk, which could not, therefore, be warranted and sold at the higher price. The court, with hesitation, held that the damage was too remote to be a subject for compensation. *Re Clarke and Wandsworth Board of Works*, 17 L. T. 549.

Damages more remote than in the cases of tort may be the subject of compensation if there is special provision in the special Act; thus, in one case under a special Act, where a towing path was rendered useless by a new channel being cut, the owner of the path, who also let out horses to be used on it, was given compensation. *R. v. Commissioners of Thames and its Navigation*, 5 A. & E. 804.

Easements.—There are, however, one or two points as to the measure of compensation which are not quite clear. Thus, when an easement or right appendant or appurtenant to land, as distinguished from a public highway, is destroyed, compensation has, whether rightly or wrongly, been assessed on the same principle as where lands have been taken (see note to section 63) and consequential damages allowed. Thus, where ancient lights were obscured, compensation was allowed both for the loss of light caused thereby and also for the loss caused by obscuring lights which were not ancient by the same works, the Court following the principle laid down in *Essex v. Acton Local Board*, 14 A. C. 153, and *Buccleuch v. Metropolitan Board of Works*, L. R. 5 H. L. 418, for ascertaining the damage to lands held with the land taken. *In re London, Tilbury, and Railway Company v. Gover's Walk School*, 24 Q. B. D. 326.

In an older case, *Glover v. North Staffordshire Railway Company* (1851), 16 Q. B. 912, where a private road was obstructed by a level crossing, CAMPBELL, C.J., and ERLE, J., thought that the passing of trains was also ground for compensation. In *Buccleuch v. Metropolitan Board of Works*, L. R. 5 H. L. 418, the rights destroyed were incorporeal, but it cannot be taken as laying down this proposition owing to the particular provisions of the special Act.

In a case where there was structural damage to a house, the arbitrator was held rightly to have allowed compensation not only for

Sect. 68. the loss in the value of the house, but also for loss occasioned to goods in the house. *Knock v. Metropolitan Railway Company*, L. R. 4 C. P. 131.

Public Highways.—The rule for determining whether a right of compensation exists in the case of public highways apparently indicates the rule by which the compensation is to be measured. The damage must be one which is sustained in respect of the property itself, and not in respect of any particular use to which it may from time to time be put. It must be less valuable for all purposes. WILLES, J., in *Beckett v. Midland Railway Company*, L. R. 3 C. P. 82, p. 95, considered that this meant that the property is “to be taken in *statu quo*, and to be considered with reference to the use to which any owner might put it in its then condition”—if a house, then as a house. The owner, he thought, is not to be expected to pull it down in order to use the land for agricultural purposes. The point was to some extent raised in *re Wadham and North Eastern Railway Company*, 14 Q. B. D. 747; 16 Q. B. D. 227. In that case the property in dispute was an hotel and publichouse, and the arbitrator held that of all purposes to which the property might be put, the purpose of an hotel was the most valuable, and the Court allowed the compensation to be assessed on its depreciation in value as such. Lord HERSCHELL, in a short report of *Metropolitan Board of Works v. Howard*, 5 “Times” L. R. 732, speaking of the compensation to be given to the owner of a publichouse, where the highway had been altered, said: “If a house were rendered less accessible to customers, that might diminish the value of the house for all purposes, although the evidence which was given with reference to the actual loss of trade and the decreased number of years purchase it would fetch on sale, ought not to have been admitted.”

It would appear, therefore, that if owing to alterations in a highway a building is decreased in value for the purpose for which it is used, but that its market value is not decreased by reason of the obstruction if used for some other purpose, then that possibility of use for that other purpose is to be taken into account in assessing the compensation. It does not appear, however, that if by reason of the obstruction the value is lowered, but by reason of the improvement of the neighbourhood due to the works the value is raised for some other purpose, that the enhanced value is to be taken into account. Cf. *Senior v. Metropolitan Railway Company*, 32 L. J. Ex. 225; *Eagle v. Charing Cross Railway Company*, L. R. 2 C. P. 638; and see section 63, note, “Betterment,” *ante*, p. 120.

Future Damages.—As regards all damages that can be foreseen, they ought to be included in the assessment of the compensation. It seems clear that, as far as foreseen damages go, the enquiry and compensation are to be made once for all, and if any damage afterwards occurs which might have been foreseen no compensation in respect thereof can be recovered either under the Lands Clauses Act or by action. *Croft v. London and North Western Railway Company*, 32 L. J. Q. B. 113. The claimant must bring forward his claim in unity, as far as he can foresee the damages, estimating them as having as much permanency as the undertaking. See per ERLE, C.J., *Chamberlain v. West End of London and Crystal Palace Railway Company*, 2 B. & S. 617, 639. Contingent damages may apparently also be taken into consideration, although they may never arise, *In re Brogden and Llynvi Railway Company*, 30 L. J. C. P. 61.

Where promoters have power to divert the whole of a stream but only **Sect. 68.**
divert part, but give notice of their intention to take the whole, they
ought to pay compensation for the whole value of the stream, and not
merely compensate them from time to time for injuriously affecting the
property of the riparian owners. *Stone v. Corporation of Yeovil*, 2 C. P. D.
99.

In *Laurance v. Great Northern Railway Company*, 14 Q. B. 643,
PATTERSON, J., in delivering the judgment of the Court, expressed a
strong opinion that the compensation did not embrace damages which
could neither be foreseen nor guessed at by the arbitrator, but judgment
was given in that case on the ground that the company had not carried
out their works with proper caution.

There is no provision in the Lands Clauses Act permitting a second
assessment, and there is no provision to the contrary. There has been
no decision as to whether a second assessment can be made or not for a
wholly unforeseen damage, although the subject has been discussed in
several cases. *Croft v. London and North Western Railway Company*, 32
L. J. Q. B. 113; *Regent's Canal Company v. Ware*, 23 L. J. Ex. 145;
Lancashire and Yorkshire Railway Company v. Evans, 15 Beav. 322.

If after one assessment further damage is caused by new works not
carried out at the time of the assessment, but at some future or subsequent
time, compensation would no doubt be allowed in respect of such further
damage. *Lancashire and Yorkshire Railway Company v. Evans*, 15 Beav.
322; *Stone v. Corporation of Yeovil*, 1 C. P. D. 691; 2 C. P. D. 99;
Attorney-General v. Metropolitan Railway Company [1894], 1 Q. B. 384.

And with respect to the purchase money or compensation
coming to parties having limited interests, or prevented from
treating, or not making title, be it enacted as follows : (a)

69. If the purchase money or compensation which shall be **Purchase money payable to parties under disability amounting to 200l. to be deposited in the bank.**
payable in respect of any lands or any interest therein, pur-
chased or taken by the promoters of the undertaking from
any corporation, tenant for life or in tail, married woman
seised in her own right or entitled to dower, guardian, com-
mittee of lunatic or idiot, trustee, executor or administrator,
or person having a partial or qualified interest only in such
lands, and not entitled to sell or convey the same except under
the provisions of this or the special Act, or the compensation
to be paid for any permanent damage to any such lands,
amount to or exceed the sum of two hundred pounds, the
same shall be paid into the bank, in the name and with the
privity of the Accountant General of the Court of Chancery
in [England if the same relate to lands in England or Wales,
or the Accountant General of the Court of Exchequer in Ireland

Sect. 69. *if the same relate to lands in Ireland*], (b) to be placed to the account there of such Accountant General, *ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the special Act (citing it), pursuant to the method prescribed by any Act for the time being in force for regulating moneys paid into the said courts; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say,)

Applica-
tion of
moneys
deposited.

In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or

In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled; or

If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by the proximity of the works, in removing or replacing such buildings or substituting others in their stead, in such manner as the Court of Chancery shall direct; or

In payment to any party becoming absolutely entitled to such money.

(a) As to the effect of the headings, see notes to section 5. The sections under this heading are sections 69—80.

(b) These words have been repealed by the Statute Law Revision Act, 1892.

“And not entitled to sell,” &c.—Section 7 confers power on persons under disability to sell and convey. Many of the classes of persons mentioned in that section have now power to sell under other Acts. This section only applies to the classes of persons named if they are not entitled to sell and convey except under the provisions of this or the special Act (see notes to section 7).

Corporation.—Thus, under the similar provisions in the Scotch Act, the word “corporation” was held not to extend to a railway company,

as they were not considered to be a corporation within the meaning of **Sect. 69.** the statute (*Caledonian Railway Company v. City of Glasgow Union Railway Company* (1869), 3rd ser. 7 Macph. 1072, 1074, but with this *Kar, J.*, did not agree in *Re Chelsea Waterworks Company*, 66 L. T. 421). As to municipal corporations, see section 15 of this Act, *supra*.

In *Kelland v. Fulford*, 6 Ch. D. 491, p. 494, *JESSEL, M.R.*, in 1877, in considering to what cases this section applied, said:—"It applies to purchase money or compensation in respect of lands taken from, first, a corporation which, not being beneficially entitled, has no power of sale, or which, being under some statutory disability, cannot sell; then a tenant for life or in tail, that is, a tenant in tail incapable of selling, as, for instance, where estates are settled and made inalienable by Act of Parliament and a tenant in tail who is prevented by law from selling, as, for instance, a tenant in special tail after possibility of issue extinct, who for all purposes of alienation considered merely as a tenant for life. Then, again, a married woman seised in her own right or entitled to dower, who cannot sell except with the concurrence of her husband, they being together owners in fee; then a guardian or committee, neither of whom can sell for himself; then a trustee, executor, or administrator, who may have the entire fee simple like a corporation, and yet may not be able to sell."

"*Tenants for Life*," &c.—Tenants for life are now by sections 3 and 4 of the *Settled Land Act*, 1882, empowered to sell the settled land; and as to selling the mansion, house, and park, see section 10 of the *Settled Land Act*, 1890. By section 58 of the 1882 Act, a tenant in tail after possibility of issue extinct, and also a tenant in tail restrained by Act of Parliament from having the reversion, have the powers of a tenant for life.

Section 22 of the Act provides that capital money arising under that Act shall in order to its being invested or applied as provided in the Act, be paid either to the trustees of the settlement or into court, at the option of the tenant for life. In order, however, that he can exercise that option, there must be trustees of the settlement in existence. If they do not exist, they should be appointed. *Hatten v. Russell*, 38 Ch. D. 334, 345. When money is paid into court under the *Lands Clauses Act*, in respect of land which is the subject of a settlement, it may be applied as provided by the *Settled Land Acts*, 1882—1890. See *infra*, p. 155.

Executors.—Where a landowner agreed to sell land to a company and died before the conveyance was completed, the company were held not entitled to pay the money into court inasmuch as the contract was made with the landowner and not with the executors, and that the section applied when the company were dealing with executors having a partial interest only. *Newton v. Metropolitan Railway Company*, 7 Jur. 738. If paid into court, it would go to the executors as personal estate. *Ex parte Hawkins*, 13 Sim. 569.

"*Accountant General*."—The office of Accountant General to the Court of Chancery in England and Wales was abolished by the Court of Chancery (Funds) Act, 1872 (35 & 36 Vict. c. 44, s. 4), and moneys to be paid in his name and privy were to be paid with the privy of the Paymaster-General on behalf of the Court of Chancery (section 6). By the Judicature Act of 1873 (36 & 37 Vict. c. 66, ss. 3, 31) the High Court of Chancery became the Chancery Division of the High Court of

Sect. 69. Justice, retaining the exclusive jurisdiction of the Court of Chancery under Acts of Parliament (section 34). By the Supreme Court of Judicature (Funds, &c.) Act, 1883 (46 & 47 Vict. c. 29), one accounting department was made for the Supreme Court, and moneys will now be paid in with the privity of Her Majesty's Paymaster-General for and on behalf of the Supreme Court of Judicature.

"Shall be paid into the Bank."—The bank means the Bank of England when the lands are situated in England. Definition, section 3, *ante*, p. 6.

If the promoters do not pay the amount into the bank, a *mandamus* will lie to compel them; and the *mandamus* could be obtained in an action under section 68 of the Common Law Procedure Act, 1854. *Barnett v. Great Eastern Railway Company*, 18 L. T. (N.S.) 408. Order 53 of the Rules of the Supreme Court is of similar effect. As to *mandamus*, see note to section 21, *ante*, p. 53, and Appendix.

Where promoters paid the money to a corporation directly, under pressure and upon protest, the corporation were ordered to pay such money as there remained in their hands into the Court. The order was made upon motion by the promoters in a suit against the corporation. *London and North Western Railway Company v. Corporation of Lancashire*, 15 Beav. 22.

In some cases where the parties have apparently consented, the Court has allowed the money to be invested without being paid into Court.

Thus in a case where the purchase money, which ought to have been paid into Court was paid to the tenant in tail of the land, the Court allowed it to be laid out in the purchase of land dispensing with the payment into Court. *In re London, Brighton, and South Coast Railway Company; Ex parte Earl of Aberystwyth*, 4 W. R. 315.

Similarly, where land belonging to a lunatic had been purchased by a railway company under their Act, an order was made for payment of the purchase money to the credit of the lunacy and for its investment in the joint account of the lunatic and the company, without its being paid into Court, subject to the company declaring themselves satisfied with the title to the land. *In re Mitnes*, 1 Ch. D. 28. The application in such a case must be instituted in the Chancery Division as well as in Lunacy. S. C.

In that case, JAMES, L.J., expressed the opinion that this section was only a direction for the safe custody of the purchase money and that compliance with its provisions was not necessary to make a good title to the promoters (p. 29).

"Prescribed by any Act for the time being in force."—The Acts at present in force are the Court of Chancery (Funds) Act, 1872, as amended by the Supreme Court of Judicature (Funds) Act, 1883.

PROCEDURE ON PAYMENT IN.

When the office of the Paymaster-General is closed, see as to procedure, section 88, *infra*.

The procedure in the Paymaster-General's office is regulated by the Supreme Court Fund Rules, 1886, as amended by various subsequent orders. The procedure for applications for investment and payment out

will be found in the notes to section 70, *post*. The rules as to lodgment Sect. 69. or payment in which are material are as follows:—

30. . . . A lodgment of funds in court not directed by an order may be made upon a direction to the bank or other company to be issued by the paymaster on a request signed by or on behalf of the person desiring to make such lodgment: *Provided that no such lodgment shall be placed in the pay office books to a separate account in a cause or matter (except to a security for costs account) unless an order has directed such separate account to be opened.* The request for a direction under this rule shall state the name of the person by or on whose behalf the funds are to be lodged, the ledger credit in the pay office books to which the funds are to be placed, and the date of the authority or certificate (if any) in pursuance of which the funds are to be lodged.

In cases of funds to be lodged in pursuance of the Lands Clauses Consolidation Act, 1845 . . . the further particulars required under rule 39 should be stated in the request . . .

Except in cases next mentioned, the requests under this rule shall be in the Form No. 8 (for money) and No. 9 (for securities), in the Appendix to these rules.

FORM NO. 8.

[*Request for Lodgment of Money in Chancery Division referred to in Rule 30.*]

High Court of Justice, Chancery Division.

I.—REQUEST FOR DIRECTION OF LODGMENT.

Title of cause or matter v. 18 , A. No. .

Ledger Credit to }
which lodged. } [If same as title of cause, state as above.]

Further particulars (if any) required to be stated.

The paymaster is hereby requested to issue a direction to the bank to receive from the sum of £ for the ledger credit in the books of the pay office above specified.

(Signature.)

II.—PAYMASTER'S DIRECTION FOR LODGMENT.

To the Agent of the Bank of England (Law Courts Branch).

Please receive the above-stated sum and place it to the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature.

(Signature)

(Date)

18 .

Sect. 69.**III.—BANK CERTIFICATE OF RECEIPT.**

To the Assistant Paymaster-General, Bank of England,

18 .

The above-stated sum has been this day received.

(Signature.)

By rule 3 of the Supreme Court Funds Rules, "funds" or "funds in court" means any money, government stock or annuities, or other securities or any part thereof standing or to be placed to the Pay Office Account in the books of the Bank of England or any other company, and includes boxes and other effects.

"Lodgment in court" means payment or transfer into court or deposit in court.

35. A request or authority for the issue by the paymaster of a direction for the lodgment of the funds in court may be sent to the paymaster by post, and, if so desired by the person sending the same, the paymaster shall send such direction by post to the address specified by such person.

39. Money lodged in court in the Chancery Division pursuant to the 69th section of the Lands Clauses Consolidation Act, 1845, in respect of the lands in England and Wales, shall be placed in the books at the pay office to the credit of *Ex parte the* , promoters of the undertaking, in the matter of the special Act (citing it), and some words shall be added in each case briefly expressive of the nature of the disability to sell and convey, by reason of which the money shall be so paid in, which particulars shall be stated in the request for the direction for the lodgment.

Money may be lodged in Court under the Lands Clauses Consolidation Act under sections 69, 71, 75, 76, 85, 86, 97, 107, 109, 111, 113. On applying for a direction for lodgment, the section should be stated under which the money is to be lodged, and there should be a short statement of the reason for such payment in, and, where necessary, the request should state how the amount has been determined. A Queen's printer's copy of the special Act should also be sent or produced. Daniel's "Chancery Practice," 2137, 1748.

Moneys shall remain so deposited until applied.—As to its investment until applied, see section 70, *post*, pp. 165, 167, and notes thereto.

Money paid into Court under this section is for purposes of descent constructively reconverted into realty until some person becomes absolutely entitled, when he can stop the reconversion. Until that event happens, the money is to be laid out in lands or buildings to stand limited to the same uses as the lands sold stood limited, and, therefore, must be considered as land. Thus purchase money paid into Court for land, of which an infant was absolutely seised in fee, remains

increased with the character of real estate, and on the death of the infant, descends to his heir-at-law. *Kelland v. Fulford*, 6 Ch. D. 491. Sect. 69.

Under special Acts similar decisions have been given. As to a husband's property under a special Act, see *Midland Counties Railway Company v. Owen*, 1 Coll. 80. But under this Act, Lord CRANWORTH held that money paid into Court under section 78 by a railway company for land taken from a person who was in a state of mental imbecility and continued in that state till his death, but who had not been the subject of a commission of lunacy, was not to be treated as realty but as personalty and be paid to the executors. *In re East Lincolnshire Railway Ad.*, 2 Sim. (N.S.) 260, and see *Re Harrop's Estate*, 3 Drew, 724, 733.

Under a special Act, with sections substantially the same as the Lands Clauses Act, it was held that the money paid into Court under a section similar to section 69 was to be considered as realty. The money was for the purchase of real estate to a share of which an infant was entitled as a vested remainder. Before the estate came into possession he was convicted of felony. The money being treated as realty was held not to be forfeited to the Crown. *Re Harrop's Estate*, 3 Drew, 726.

Where the fund had been overlooked for some years, it was held that the principal fund passed as real estate and the accumulations as personal estate. *Wright v. Dixie*, 32 Beav. 602.

A married woman would apparently be entitled to dower out of the money. See *Re Wilts; Somerset and Weymouth Railway Company*, 2 Dr. & Sm. 552.

As to cases where the land taken was under a settlement and was held not converted into personalty under special Acts, see *Re Taylor's Settlement*, 9 Hare, 596; *Re Robertson*, 26 L. J. Ch. 349; *Re Skeggs*, 2 De G. J. & S. 533; *Re Stewart*; *Ex parte Cramer*, 1 Sm. & Giff. 32.

APPLICATION OF MONEYS DEPOSITED.

For the procedure, see section 70, *post*, p. 165, and notes.

The methods of application have been considerably extended in respect of money paid into Court, in respect of lands which are the subject of a settlement by the Settled Land Acts, 1882—1890. As the money may be applied in the same way as capital money under these Acts it is proposed to deal with the application of the moneys first under this section, and then under the Settled Land Acts, *post*, p. 155, and then with the payment out to persons absolutely entitled.

I. APPLICATION UNDER THIS SECTION.

Land tax.—In the case of *In re Lee and Hemingway*, 24 Ch. D. 669, the money paid in under a special Act, was ordered to be paid to trustees of a will, they undertaking to apply it in the redemption of land tax affecting other property vested in them as such trustees.

Under a similar provision in a special Act, a tenant for life who had paid out of his own moneys redeemed the land tax on parts of the settled estates prior to the passing of the special Act was allowed to reimburse himself out of the proceeds of the lands purchased by the company. *Ex parte Northwich*, 1 Y. & C. Ex. 166.

The land tax on lands purchased under this section may also be redeemed. *Re the Vicar of Queen's Camel*, 8 L. T. (N.S.) 233.

Sect. 69. "Discharge of any Debt or Incumbrance."—The expression "debt or incumbrance," has been construed widely, but it must affect the land or land settled therewith, and must be in the nature of a debt affecting the inheritance.

Thus it has not been allowed to be applied to the following purposes :—

Purchase money for a portion of a glebe may not be applied for the restoration of the chancel of the church, or in paying off the money borrowed from the governors of Queen Anne's Bounty. *In re Louth and East Coast Railway Company; Ex parte Rector of Grimoldby*, 2 Ch. D. 225.

Nor in the payment off of a rent charge on the glebe lands payable by instalments, which probably did not affect the inheritance, but only the interest of the rector for the time being. *Ex parte Rector of Kirkmeaton*, 20 Ch. D. 203. Nor in paying off advances under the Drainage Act (5 & 6 Vict. c. 89), repayable by instalments by the tenant for life. The fund in Court represents the corpus of the property. *In re Commissioners of Public Works*, 6 Ir. Ch. 53.

As to paying corporation, debts under provisions of a special Act, see *Ex parte Hythe*, 4 Y. & C. 55; and *In re Dublin, &c., Railway Company*, 13 L. R. Ir. 479.

The money has been allowed to be applied to the following purposes, as debts or incumbrances affecting the land or affecting other lands settled therewith.

Mortgage.—Where land had been taken from a corporation, the purchase money was allowed to be used to pay off indentures of mortgage secured on certain tolls which were ancient franchises. It was also allowed to pay off bonds given for money borrowed under the Baths and Washhouses Act (9 & 10 Vict. c. 74), the interest on which had been paid out of the borough fund which was largely comprised of the rents and profits of the real estates of the corporation. *In re Derby Municipal Estates*, 3 Ch. D. 289.

Under a special Act, with a provision similar to section 69, the money was allowed to be applied to the payment of a mortgage on other lands belonging to a corporation. *Ex parte Corporation of Cambridge; Re Eastern Counties Railway Company*, 5 R. Ca. 204.

It may be used to pay off a mortgage on other lands settled to similar uses. *Re Dublin, Wicklow, &c., Railway Company; Ex parte Richards*, 25 L. R. Ir. 175.

Leaseholds.—Where lands let on long leases have improved in value, so that the lands could be let at increased rents, corporations, having the reversions of such leases, will be allowed to apply money deposited in Court as the price of other lands belonging to them, to purchasing the surrender of these leases. *Ex parte Corporation of Sheffield*, 25 L. J. Ch. 587.

And, similarly, where the land is wanted by the corporation for improvements, and the reversion is in the corporation, money deposited in respect of other lands taken by public companies may be applied to purchasing the leaseholds. *Ex parte Corporation of London*, 5 Eq. 418.

Where land belonging to an episcopal see had been taken, the moneys were allowed to be used to buy up a lease of other lands of the see. *Ex parte Bishop of London*, 2 De G. F. & J. 14.

A tenant for life has also been allowed to purchase a surrender of a lease. *Re Townshend's Estates*, W. N. (1882), 7.

Rents.—Where a lessor had his interest taken and at the date of the **Seot. 69.** award, and before the company took possession, rent was due and unpaid, and the lessor had a right of re-entry in consequence, it was held that the right of re-entry was an incumbrance on the leasehold interest. *Re London Street, Greenwich*, 57 L. T. 673.

The money may be applied to redeeming an annual quit rent. *Commissioners of Public Works*, 6 Ir. Ch. 53.

It may also be applied to redeeming tithe rent-charges issuing out of lands devised to the same uses as the land in respect of which the money is paid. *In re Commissioners of Church Temporalities in Ireland; Ex parte Lord Leonfield*, 1 R. 8 Eq. 559.

But where a perpetual tithe rentcharge had been ordered to be merged, and a sum in lieu thereof, to be paid for a period of 52 years, the Court refused to allow the money to be applied to the redemption of this charge. *In re Dublin, Wicklow, &c., Railway Company; Ex parte Tottenham*, 13 L. R. Ir. 479.

Statutory Charges.—A tenant for life was allowed to apply the money to reinstating structures as required by the Metropolitan Building Act (18 & 19 Vict. c. 122); for if not reinstated, they were liable to be sold. *In re David's Estate*, 3 De G. & J. 144.

The money may be applied to paying off expenses charged on allotments under Enclosure Acts. *Ex parte Queen's College, Cambridge*, 16 Beav. 159, note.

So, also, it may be applied to fencing such allotments when the Act allows part of the allotment to be sold for the purpose of raising money to fence. *Ex parte Lockwood*, 16 Beav. 158.

And where under the General Enclosure Act (8 & 9 Vict. c. 118, ss. 16 and 123), a tenant for life had power to mortgage the enclosure for the purpose of meeting the expenses connected therewith, but had died without having done so, it was held that the sums expended were a charge on the allotments, and the deposited money might be applied by the trustees to pay those expenses. *Vernon v. Earl Manserv*, 11 W. R. 123.

The money may also be applied in paying off charges for improvements under the Settled Land Act. *Ex parte Vicar of Bytham* (1895), 1 Ch. 248.

"In the Purchase of other Lands."—*Copyholds*.—It was doubted by KENT BRUCE, V.O., whether this section authorised the purchase money arising from freehold land to be invested in copyhold, but he allowed it to be so applied on the master having reported that it would be for the benefit of all persons interested. *In re Commissioners Estate*, 19 L. J. Ch. 376.

In a later case where the lands taken were both copyhold and freehold, part of the purchase money was allowed to be spent in purchasing other copyhold land in the same manor. *Re Browne and Oxford, &c., Railway Acts*, 6 R. C. 733.

If copyhold lands are taken the money may be laid out in the purchase of other copyholds. *Re Eastern Counties Railway Company; Ex parte Vicar of Saxton*, 27 L. J. Ch. 755.

Where copyholds and freeholds are settled on the same trusts the moneys paid in for the purchase of the freeholds, may be applied to the enfranchisement of the copyhold. An enfranchisement of copyholds is

Sect. 69. equivalent to reinvestment in other lands. *In re Cheshunt College*, 3 W. R. 638; *Dizon v. Jackson*, 25 L. J. Ch. 588.

Under the Liverpool Dock Acts, money paid into Courts for the purchase of leaseholds was allowed to be laid out in copyholds of inheritance. *In re Coyte's Estate*, 1 Sim. (N.S.) 202.

Leaseholds.—The purchase money of freehold land cannot, as a general rule, be invested in leasehold property. *Ex parte Macauley; Re Lancashire and Yorkshire Railway Company*, 23 L. J. Ch. 815.

Such an investment was allowed where the land taken belonged to a college, and the leasehold to be purchased had 977 years to run, and was a brickfield adjoining a vicarage and causing a nuisance, the living belonging to the college. *Ex parte Trinity College, Cambridge*, 18 L. T. 849.

Where the land taken was a freehold site of a chapel, and there was great difficulty in obtaining a suitable freehold site for a new chapel, the money was allowed to be applied in purchasing a leasehold chapel on beneficial terms. *In re Rehoboth Chapel*, 44 L. J. Ch. 375.

As to the investment of money arising from the purchase of leaseholds, see section 74, and notes thereto, *post*.

Equity of Redemption.—The fund cannot be applied to the purchase of an equity of redemption, and, therefore, may not be applied in part payment of an estate which was to be mortgaged as a security for the remainder of the purchase money. *Ex parte Oraven; Re Portadown, &c., Railway Company*, L. R. 10 Ir. Eq. 368.

Land outside England.—The money has been allowed to be invested in the purchase of land in the Isle of Man. *In re Taylor's Estate*, 40 L. J. Ch. 454.

Buildings and Other Works.—The fund in Court may, under this section, be applied in erecting new buildings and works—

- I. As an investment in land.
- II. As replacing buildings taken or injured.

I. Buildings as an Investment in Land.—When money is paid into Court representing the price of land taken it will not generally be allowed to be laid out in the erection of buildings unless special circumstances are shown. *Ex parte Corporation of Liverpool*, 1 Ch. 596.

The Courts have, however, on several occasions, allowed the fund to be so applied, and the cases on the subject are somewhat conflicting. From such of them as have gone to the Court of Appeal it would appear that the following conditions must be complied with :—

1. It must be shown that the building is for the benefit of the estate or of the *cestuique* trust.
2. New buildings must be put in the ground either quite new or in place of old ones which require to be pulled down.
3. In the case of settled lands prior to the Settled Land Acts the remaindermen must consent.

These rules will be found in *Ex parte Corporation of Liverpool*, 1 Ch. Sect. 69. 596; *In re Leigh's Estate*, 6 Ch. 887; *Drake v. Trefusis*, 10 Ch. 364.

These rules have been applied to the following facts:—

Money in Court as the price of corporate lands may not be laid out in building offices for the corporation unless shown to be beneficial to the cestuique trust. *Ex parte Corporation of Liverpool*, 1 Ch. 596.

It may be applied to making an addition to a house which will enhance its value for letting purposes. *In re Spicer's Trust*, 3 Ch. D. 262. Or where a portion of an estate is taken it may be spent in erecting houses or cottages which will develop the remainder of the estate. *Re Partington's Trust*, 7 L. T. (N.S.) 522; *Re Drummer*, 2 De G. J. & S. 15; *Ex parte Shaw*, 4 Y. & C. 506; *Re Wright's Devised Estates*, 5 W. R. 718.

For cases under the Settled Land Acts, see *infra*, p. 160.

Building a house on a vacant piece of ground is, in substance, the same thing as buying a house. Similarly, a ruinous house which must be taken down may be rebuilt if beneficial to the estate. *Drake v. Trefusis*, 10 Ch. 364; and see *In re Davies's Estates*, 27 L. J. Ch. 712. For cases under similar provisions in wills, &c., to those in *In re Lord Hotham's Trusts*, 12 Eq. 76; *Brunskill v. Caird*, 16 Eq. 493; *In re Newman's Settled Estates*, 9 Ch. 681; *Donaldson v. Donaldson*, 3 Ch. D. 743.

The money paid for lands held in trust for a chapel has also been applied to the purchase of buildings, and for their conversion into a dwelling-house for the pastor or the keeper of a chapel. *In re Lymington Baptist Chapel*, W. N. (1877), 226.

Money in Court for payment of part of a glebe has been allowed to be expended in building a new rectory. *In re Incumbent of Whitfield*, 1 J. & H. 610; *Ex parte Bradfield St. Claire (Rector)*, 32 L. T. 248. And in building new farm buildings on the rest of the land. *Ex parte Rector of Shipton-under-Wychwood*, 19 W. R. 549; *Ex parte Rector of Gamston*, 33 L. T. (N.S.) 803.

Money paid for a disused burial ground, taken under what is commonly called *Michael Angelo Taylor's Act* (57 Geo. 3, c. 29), may be applied in purchasing a suitable house for a vicarage, and doing the alterations and repairs necessary to adapt it for that purpose. *Ex parte Vicar of St. Botolph's, Aldgate* [1894], 3 Ch. 544.

Money received for purchase of the glebe has also been allowed to be applied to completing the building of a new rectory, the rest of the money being found otherwise. *Ex parte Hartington*, 11 W. R. 484; cf. *Williams v. Aylesbury and Buckingham Railway Company*, 9 Ch. 684.

The money paid into Court in respect of a glebe, if to be laid out in buildings, will be payable to the secretary or nominee of the bishop, under 1 & 2 Vict. c. 106. *Re Incumbent of Whitfield*, 1 J. & H. 610; *Ex parte Rector of Claypole*, 16 Eq. 574.

Repairs and other Works.—From the conditions above laid down it would follow that money cannot be expended in repairs, and it has been refused in certain cases. Thus, it has been refused to a tenant for life to repair the mansion house. *In re Leigh's Estate*, 6 Ch. 887; and to repaying to a rector money paid by him to complete the rebuilding of a rectory house which had been in a ruinous condition. *Williams v. Aylesbury and Buckingham Railway Company*, 43 L. J. Ch. 825.

Sect. 69. It has not been allowed to be expended on making new roads and drains. *In re Belfast Water Commissioners*, 1 R. 5 Eq. 63; cf. *Re Venour*, 2 Ch. D. 522; and *Re Vicar of Queen's Camel*, 11 W. R. 503.

There are, however, several cases where the Court has allowed the money to be laid out in repairs, but it is doubtful how far these may be regarded as authorities.

In one case, it was held applicable to the repairs of a copyhold house when the expenditure proposed was necessary to the preservation of the trust, and there were no other funds for the purpose. *In re Aldred's Estate*, 21 Ch. D. 228.

In two cases money paid for a glebe has been allowed to be spent on the repair of the rectory house, although not on the church. *In re Louth and East Coast Railway Company*; *Ex parte Rector of Grimoldby*, 2 Ch. D. 225; *Ex parte Rector of Claypole*, 16 Eq. 574; but see *In re Nether Stowey Vicarage*, 17 Eq. 156.

Other Works.—Prior to the Settled Land Acts, the fund has been applied to improving the supply of water to the town where the property which belonged to a charity was situated (*In re Lathropp's Charity*, 1 Eq. 467), and also to supplying water to a portion of a settled estate which had been built over where there was a difficulty in getting a proper supply. *In re Croker's Estate*, W. N. (1877), 38; cf. *In re Leslie*, 2 Ch. D. 185; and *In re Venour*, 2 Ch. D. 522.

It has also been allowed for the making of drains (*Vicar of Queen's Camel*, 11 W. R. 503); and in altering rooms in almshouses. *Re Buckinghamshire Railway Company*, 14 Jur. 1065, p. 159.

For cases under settlements, see now the Settled Land Acts, *infra*.

When land belonging to a university or college is taken it may be applied to the building of houses or colleges or other buildings under the Universities and College Estates Acts, 21 & 22 Vict. c. 44, ss. 27, 28, and 43 & 44 Vict. c. 46, s. 24. *Ex parte King's College, Cambridge* (1891), 1 Ch. 677.

Repaying money expended.—In the case of *In re Leigh's Estate*, 6 Ch. 887, it was laid down that the money could not be expended in repaying what has already been expended unless the expenditure was properly a charge upon the inheritance; and see *Williams v. Aylesbury and Buckingham Railway Company*, 9 Ch. 684; *In re Stock's Devised Estates*, 42 L. T. (N.S.) 46, to the same effect. If the Court would have sanctioned the application if made prior to the payment, although not a charge on the inheritance, and if the remaindermen have previously consented, possibly the repayment may be allowed. *Re Partington's Trust*, 11 W. R. 160; and see *Ex parte Rector of Gamston*, 1 Ch. D. 477; *Ex parte Rector of Holywell-cum-Needlingworth*, 27 W. R. 707.

For cases under settlements, where repayment will be allowed, see now section 15 of the Settled Land Act, 1890 (53 & 54 Vict. c. 69), *post*, p. 162.

II. Replacing Buildings taken or Injured.—Where a railway passed through a farm and divided it so that the buildings could not be conveniently used for one part of the farm, it was held that this was an injury which required the substitution of other buildings, and that the compensation paid might be applied in the erection of new farm buildings on that part which required them. *Re Oxford, Worcester, &c.,*

Railway Company; *Ex parte Milward*, 29 L. J. Ch. 245; and see also Sect. 69.
Ex parte Dean of Canterbury, 10 W. R. 505.

Where the effect of the construction of a line of railway had been to divert business from certain trade buildings and to render them useless as such, and had also rendered a stackyard and farm buildings liable to fire and uninsurable, they were considered sufficiently special circumstances to allow money paid for land taken to be laid out in taking down the trade buildings and erecting dwelling-houses instead, and removing the stackyard and roofing the farm buildings with slate instead of thatch. *Re Johnson*, 8 Eq. 348.

Where a railway company had taken premises used as a hospital, part of the money was allowed to be applied in procuring and fitting up houses for the temporary accommodation of the patients, these being a sufficient substitution within this section. *In re St. Thomas's Hospital*, 11 W. R. 1018.

Where almshouses were taken the money was sanctioned to be laid out in the construction of other almshouses. *Ex parte Thorner's Charity*, 13 L. T. (o.s.) 266.

Under a special Act, where, on the construction of a new road, the vicarage house had been cut through, leaving only half the vicar's kitchen standing, and that half exposed, Lord ELDON ordered part of the money for land taken to be applied to restore the damage done to the vicarage house, although, apparently, there was no proviso as to replacing buildings injured. See a case referred to by TURNER, L.J., *In re Davies's Estate*, 27 L. J. Ch. 712, 713.

The court will not, apparently, order the application of the fund to replacing buildings without a reference to chambers as to whether they should be carried out. *Ex parte Bicester*; *Re Buckinghamshire Railway Company*, 5 R. C. 205.

II. APPLICATION OF MONEYS UNDER THE SETTLED LAND ACTS.

When the money paid in under this section is in respect of lands which are the subject of a settlement within the meaning of the Settled Land Acts (see definition of "Settlement," *infra*), the fund in Court may be applied not only as provided in the Lands Clauses Acts, but in the ways provided in the Settled Land Acts. This is provided by section 32 of the Settled Land Act, 1882 (47 & 48 Vict. c. 18), as follows:—

32. "Where under an Act incorporating or applying, wholly or in part, the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, or under the Settled Estates Act, 1877, or under any other Act, public, local, personal, or private, money is at the commencement of this Act in Court, or is afterwards paid into Court, and is liable to be laid out in the purchase of land to be made subject to a settlement then in addition to any mode of dealing therewith authorised by the Act under which the money is in Court, that money may be invested or applied as capital money arising under this Act, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and (notwithstanding anything in this Act) according to the same procedure, as if the modes of investment or application authorised by this Act were authorised by the Act under which the money is in Court."

The modes of investment and application of capital money and regulations concerning the same are contained in—

The Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 21—30.

Sect. 69. The Settled Land Acts (Amendment) Act, 1887 (50 & 51 Vict. c. 30), ss. 1 and 2.

The Settled Land Act, 1890 (53 & 54 Vict. c. 69), ss. 13—15.

The more important of these are given below.

When Settled Land Acts Apply.—These Acts will apply whenever the money is “liable to be laid out in the purchase of land to be made subject to a settlement.” A settlement is defined in the Settled Land Act, 1882, thus:—

2. (1.) “Any deed, will, agreement for a settlement, covenant to surrender, copy of Court rolls, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires.”

Where the money was paid into Court in respect of land held absolutely by a charity, *Fry, J.*, held that the money might be invested under section 21 of the Settled Land Act, 1882, and that the word “settled” in the 69th section of the Lands Clauses Act was to be read with section 32 of the Settled Land Act. *In re Byron's Charity*, 23 Ch. D. 171, followed apparently in *In re Bethlehem and Bridewell Hospitals*, 30 Ch. D. 541; *Ex parte Jesus College, Cambridge*, W. N. (1884) 37.

The word “settled” in the 69th section is to be read as if it were “stood limited.” *Kelland v. Fulford*, 6 Ch. D. 491, per *JESSEL, M.R.*

Where, by an inclosure award, land is allotted to a vicar “and his successors, vicars of Castle Bytham,” the vicar takes in his corporate capacity, and the lands are not settled lands under the definition clause of the Settled Land Act; but money in Court, under section 69 of the Lands Clauses Consolidation Act in respect of such lands, may nevertheless be laid out as capital money under the Settled Land Acts, inasmuch as the word settlement in section 32 of the Settled Land Act, 1882, is to be given the wide meaning that it has under section 69 of the Lands Clauses Act. *Ex parte Vicar of Castle Bytham* (1895), 1 Ch. 348.

Investment of Capital Money.

21. Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorised object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes (namely):

- (i.) In investment on Government securities, or on other securities on which the trustees of the settlement are by the settlement or by law authorised to invest trust money of the settlement, or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock, of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares,

with power to vary the investment into or for any other such securities : **Sect. 69.**

- (ii) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of land tax, rentcharge in lieu of tithe, Crown rent, chief rent, or quit rent, charged on or payable out of the settled land :
- (iii) In payment for any improvement authorised by this Act :
- (iv) In payment for equality of exchange or partition of settled land :
- (v) In purchase of the seignory of any part of the settled land, being freehold land, or in purchase of the fee simple of any part of the settled land, being copyhold or customary land :
- (vi) In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life :
- (vii) In purchase of land in fee simple, or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land :
- (viii) In purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals, convenient to be held or worked with the settled land, or if of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes :
- (ix) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge :
- (x) In payment of costs, charges, and expenses of and incidental to the exercise of any of the powers, or the execution of any of the provisions of this Act :
- (xi) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

To these modes of application must be added the following from the Settled Land Acts (Amendment) Act, 1887 :—

1. Where any improvement of a kind authorised by the Act of 1882 has been or may be made either before or after the passing of this Act, and a rentcharge, whether temporary or perpetual, has been or may be created in pursuance of any Act of Parliament, with the object of paying off any moneys advanced for the purpose of defraying the expenses of such improvement, any capital money expended in redeeming such rentcharge, or otherwise providing for the payment thereof, shall be deemed to be applied in payment for an improvement authorised by the Act of 1882.

See, for example, the Agricultural Holdings Act, 1883, sections 31 and 42.

The fund may also be applied to the erection of cottages and houses

Sect. 69. for the working classes. Housing of Working Classes Act, 1890, s. (74), sub-sect. (1) (b.), and see the Settled Land Act, 1890, s. 18.

Sub-section (i.) The money cannot be applied in the purchase of land out of England unless the settlement expressly authorises it. Section 22 of the Settled Land Act, 1882.

The law authorising the investment of trust moneys is contained in the Trustee Act, 1893 (56 & 57 Vict. c. 53), Part I. Section 5 enacts that trustees empowered to invest in real securities may invest in mortgage of property held for an unexpired term of not less than 200 years, and not subject to any reservation of rent greater than one shilling a year, or to any right of redemption or re-entry except for non-payment of rent and upon any charge, or upon mortgage of any charge made under the Improvement of Land Act, 1864.

Sub-section (ii.). *Incumbrances*.—Under these are included a debt secured by a mortgage of a long term (*In re Frewen*, 38 Ch. D. 383; *In re Marlborough's Settlement*, 32 Ch. D. 1), also an annuity under a marriage settlement charged upon tithes for a long period. *Re Esdaile*, 54 L. T. 637. It is not necessary that the mortgage should be one affecting the whole of the settled land (*In re Chaytor's Settled Estate Act*, 25 Ch. D. 651), and where there are several estates held under the same trust, money arising from one estate may be used to discharge incumbrances on the other if for the benefit of all parties (*In re Stamford's Settled Estate*, 43 Ch. D. 84, 95; *In re Freme*, *Freme v. Logan* (1894), 1 Ch. 1), and the same principle is applied to estates held on the same trusts under different instruments. *In re Mackenzie's Trusts*, 23 Ch. D. 750; *In re Mundy's Settled Estates* [1891], 1 Ch. 399; *In re Byng's Settled Estates* (1892), 2 Ch. 219.

Prior to the provision in section 1 of the Settled Land Act, 1887 (*supra*), moneys in court could not be applied to paying off rentcharges or instalments of a temporary nature created prior to the Settled Land Act, 1882, for drainage and other improvements under the Land Improvement Act, 1864. *In re Knatchbull's Settled Estate*, 27 Ch. D. 349; 29 Ch. D. 588. But the fund in Court may now be applied in paying off such instalments or terminable rentcharges, and also to paying a reasonable and proper sum by way of bonus to compensate the lender for loss of interest by reason of the redemption. *In re Lord Egmont's Settled Estates*, 45 Ch. D. 395, not approving as to interest *In re Lord Sudeley's Settled Estates*, 37 Ch. D. 123.

The tenant for life is not, however, entitled to be recouped out of capital money the instalments of the rentcharges paid before the Act of 1887 came into operation, but he may be paid those after the Act has passed, and after he has raised the question, notwithstanding that the improved portions of the estate have been sold. *In re Howard's Settled Estates* [1892], 2 Ch. 133, and see to same effect *In re Dalison* [1892], 3 Ch. 522; *In re Bristol's Settled Estates* [1893], 3 Ch. 161.

But, in order that these incumbrances may be paid off out of capital money, it must be shown that the works done with the money so received from the Commissioners must be within the improvements mentioned in section 25, and not work for which the tenant for life was liable. Money borrowed for land drainage may be paid off. *Re Necton's Settled Estates*, 61 L. T. 787.

The Court has a discretion in allowing there incumbrances, and refused to allow money to be applied to pay off a rentcharge on a glebe, on the application of the vicar, as the patrons objected. *Ex parte Vicar of Castle Bytham* (1895), 1 Ch. 348.

Sub-section (iii.). *Improvements*.—These are dealt with in section 25 Sect. 69. and notes thereto, *infra*.

Sub-section (ix.). See *infra*, note “In payment to any person becoming absolutely entitled,” p. 163.

Sub-section (x.). *Costs*.—As to this see section 80 of the Lands Clauses Act, *post*.

In a case of improvements under the Settled Land Act, 1882, it was held that the costs as between solicitor and client of the solicitor and surveyor of the tenant for life for preparing and carrying out the necessary schemes for improvements were costs incidental to the application, and were payable out of the capital moneys. *Re Lord Stamford's Settled Estates*, 43 Ch. D. 84.

Improvements with Capital Trust Money.

25. Improvements authorised by this Act are the making or execution on, or in connection with, and for the benefit of settled land, of any of the following works, or of any works for any of the following purposes, and any operation incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes (namely) :

- (i.) Drainage, including the straightening, widening, or deepening of drains, streams, and watercourses :
- (ii.) Irrigation ; warping :
- (iii.) Drains, pipes, and machinery for supply and distribution of sewage as manure :
- (iv.) Embanking or weiring from a river or lake, or from the sea, or a tidal water :
- (v.) Groynes ; sea-walls ; defences against water :
- (vi.) Inclosing ; straightening of fences ; re-division of fields :
- (vii.) Reclamation ; dry warping :
- (viii.) Farm roads ; private roads ; roads or streets in villages or towns :
- (ix.) Clearing ; trenching ; planting :
- (x.) Cottages for labourers, farm-servants, and artisans, employed on the settled land or not :
- (xi.) Farmhouses, offices, and out-buildings, and other buildings for farm purposes :
- (xii.) Saw mills, scutch-mills, and other mills, water-wheels, engine-houses, and kilns, which will increase the value of the settled land for agricultural purposes or as woodland or otherwise :
- (xiii.) Reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural, manufacturing, or other purposes, or for domestic or other consumption :

Sect. 69. (xiv.) Tramways ; railways ; canals ; docks :

(xv.) Jetties, piers, and landing places on rivers, lakes, the sea, or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes :

(xvi.) Markets and market places :

(xvii.) Streets, roads, paths, squares, gardens, or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connection with the conversion of land into building land :

(xviii.) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connexion with any of the objects aforesaid :

(xix.) Trial pits for mines, and other preliminary works necessary or proper in connexion with development of mines :

(xx.) Reconstruction, enlargement, or improvement of any of those works.

These improvements have been extended by the Settled Lands Act, 1890, as follows :—

13. Improvements authorised by the Act of 1882 shall include the following ; namely,

(i.) Bridges ;

(ii.) Making any additions to or alterations in buildings reasonably necessary or proper to enable the same to be let ;

(iii.) Erection of buildings in substitution for buildings within an urban sanitary district taken by a local or other public authority, or for buildings taken under compulsory powers, but so that no more money be expended than the amount received for the buildings taken and the site thereof ;

(iv.) The re-building of the principal mansion house on the settled land : Provided that the sum to be applied under this subsection shall not exceed one-half of the annual rental of the settled land.

It has been laid down that, in determining whether any particular application of capital money under the Settled Land Acts should be sanctioned by the Court, the code of rules in these Acts is to be regarded solely, and that the decisions under the Lands Clauses Acts are not applicable. *In re Lord Gerard's Settled Estate* [1893], 3 Ch. 252. But in determining questions under the Lands Clauses Acts, the decisions under both sets of Acts will no doubt apply. See the cases under the Lands Clauses Act, cited *supra*, note "Buildings."

In the last-mentioned case the Court refused to sanction the following improvements :—(1) Building additions to the mansion house, and improving its architectural appearance ; (2) Building a chapel for

Roman Catholic service; (3) Building new stables, the then existing stables being inconvenient and insufficient; (4) Building a house for the residence of an estate agent, disapproving *In re Houghton's Estate*, 40 Ch. D. 102, where similar improvements were sanctioned as an outlay for capital money.

An application to lay out capital moneys to come to the hands of trustees in the construction of roads and sewers so as to enable them to sell an estate in building lots was refused, as a prospective order of this kind would be contrary to the provisions of section 26, *infra*. *In re Millard's Settled Estates* [1893], 3 Ch. 116; *In re Bristol's Settled Estates* [1893], 3 Ch. 161; *In re Hotckhin's Settled Estates*, 35 Ch. D. 31, as to this may be considered overruled.

Ordinary repairs cannot be paid out of capital moneys, they must come out of income; only such improvements as are mentioned in the Act will be allowed. *Clarke v. Thornton*, 35 Ch. D. 307. Drainage works required to be done under the Public Health Act are apparently not repairs, and are payable out of capital money. *In re Barney*; *Harrison v. Barney* (1894), 3 Ch. 562.

The following improvements have been authorised:—

The erection of sea walls in order to improve the land for building purposes. *In re Bethlehem and Bridewell Hospitals*, 30 Ch. D. 541.

The erection of new farm buildings and houses, draining, reconstruction of existing buildings, the matter being referred to chambers to determine what were improvements, and what ordinary repairs. *Clarke v. Thornton*, 30 Ch. D. 307. As to the distinction between a trust for improving and for purchasing land, see *Vine v. Raleigh* (1891), 2 Ch. 13.

In erecting a new pumping engine and pumps for draining mines. *In re Mundy's Settled Estates* (1891), 1 Ch. 399.

In supplying water to a building estate. *In re Bulwer Lytton's Will*, 38 Ch. D. 20. *In re Orrell Park Estate* (1894), W. N. 135.

The erection of a silo was refused as being at the time in the nature of an experiment. *Re the Broadwater Estate*, 53 L. T. 745.

The Settled Land Act, 1890, s. 13, *supra*, p. 160, has enlarged the power of the Court.

Thus, under sub-section (ii.) of that section, capital money has been allowed to be laid out in placing a new roof on a house not necessarily the mansion house, in lieu of an old and rotten one, and in making an alteration in the main entrance by which a billiard room could be provided and which would render the house less cold and draughty, in order that it might be let. The providing of a heating apparatus and pipes, though rendering the house more comfortable and convenient, was held not to be an improvement, or an alteration within the above sections. *In re Gaskell's Settled Estates* [1894], 1 Ch. 485.

Under sub-section (iv.) of the same section, the tenant for life was allowed out of the fund money expended by him in reconstructing the mansion house, when a large portion was taken down, although part was left unaltered, the house as a whole being enlarged and made more convenient. Each case must be decided on its own facts, but there must be a substantial rebuilding. *In re Walker's Settled Estate* [1894], 1 Ch. 189.

The rebuilding under this sub-section (iv.) will not include structural repairs, however extensive, such as putting on a new roof, or rearranging the drainage. Nor will these be allowed under sub-section (ii.) unless there is a present intention to let, if not an immediate prospect of letting. *In re De Teissier's Settled Estates* [1893], 1 Ch. 153.

Sect. 69. The words "one-half of the annual rental of the settled land," refer to the whole of the land subject to the settlement, and not to the particular estate on which the house is situate (*In re Lord Gerard's Settled Estate* [1893], 3 Ch. 252), and they include the income of money in Court in respect of the settled land (*In re De Teissier's Settled Estates* [1893], 1 Ch. 153), but not anything in respect of land in the occupation of the tenant for life, but they may include the amount of rent usually paid for a farm temporarily vacant. *In re Walker's Settled Estate* [1894], 1 Ch. 189.

26. (1.) Where the tenant for life is desirous that capital money arising under this Act shall be applied in or towards payment for an improvement authorised by this Act, he may submit for approval to the trustees of the settlement, or to the Court, as the case may require, a scheme for the execution of the improvement, showing the proposed expenditure thereon.

(2.) Where the capital money to be expended is in the hands of trustees, then, after a scheme is approved by them, the trustees may apply that money in or towards payment for the whole or part of any work or operation comprised in the improvement, on—

(i.) A certificate of the Land Commissioners certifying that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which certificate shall be conclusive in favour of the trustees as an authority, and discharge for any payment made by them in pursuance thereof; or on

(ii.) A like certificate of a competent engineer, or able practical surveyor nominated by the trustees and approved by the Commissioners, or by the Court, which certificate shall be conclusive as aforesaid; or on

(iii.) An order of the Court directing or authorizing the trustees to so apply a specified portion of the capital money.

(3.) Where the capital money to be expended is in Court, then, after a scheme is approved by the Court, the Court may, if it thinks fit, on a report or certificate of the Commissioners, or of a competent engineer or able practical surveyor, approved by the Court, or on such other evidence as the Court thinks sufficient, make such order, and give such directions as it thinks fit for the application of that money, or any part thereof, in or towards payment for the whole or part of any work or operation comprised in the improvement.

For the Land Commissioners are now substituted the Board of Agriculture (52 & 53 Vict. c. 30).

The Settled Land Act, 1890, has amended this as follows:—

15. The Court may, in any case where it appears proper, make an order directing or authorising capital money to be applied in or towards payment for any improvement authorised by the Settled Land Acts, 1882 to 1890, notwithstanding that a scheme was not, before the execution of the improvement, submitted for approval, as required by the Act of 1882, to the trustees of the settlement or to the Court.

This section of the 1890 Act is retrospective as regards costs of **Sect. 69.** improvements executed since the Settled Land Act, 1882, but *quære* as to those prior to that Act. *In re Ormrod's Estate* (1892), 2 Ch. 318.

For cases prior to this amendment, see *In re Hotchkiss' Settled Estates*, 35 Ch. D. 41. *Re the Broadwater Estate*, 53 L. T. 745.

"In payment to any party becoming absolutely entitled."—This means "entitled to his or her own use," as, for instance, where an infant attains twenty-one, or a married woman becomes discovert. See per JESSEL, M.R., in *Kelland v. Fulford*, 6 Ch. D. 491, p. 495.

A waterworks company, part of whose land was taken, was held to be absolutely entitled. The land taken was used by them under statutory powers, and they had no power of sale. The money was held to have been rightly paid in, but was ordered to be paid out to them. *Re Chelsea Waterworks Company*, 66 L. T. 421.

A dowress is a person absolutely entitled and may have the value of her dower as determined by the valuers paid to her out of the fund in Court. *In re Hall's Estate*, 9 Eq. 179.

A person who under a will was to be entitled to the testator's land on paying a specified price, was held entitled to the money paid into Court, representing the land on paying such price, although the amount in Court was more than twice the specified sum. *Re Cant's Estate*, 4 De G. & J. 503.

Copyholders and freeholders with right of common are absolutely entitled to their share of the money paid into Court in respect of common land taken compulsorily. It was ordered that the sum be apportioned between them and paid out to them. *Fox v. Amhurst*, 20 Eq. 403.

Tenants of such copyholders have no such right. *Austin v. Amhurst*, 7 Ch. D. 689. In the case of freemen of a borough, see *Nash v. Coombs*, 6 Eq. 51. For provisions as to copyhold lands and commons, see *post*, ss. 95—107.

Mortgages in possession are entitled to be paid out of the price of the premises including the sum assessed for loss of goodwill (*Pile v. Pile*, 3 Ch. D. 36), but when not in possession, see *Cooper v. Metropolitan Board of Works*, 35 Ch. D. 472.

A tenant for life without impeachment of waste is not entitled to any part of the compensation paid by a railway company in respect of minerals under the settled estate, although a portion of them would have been worked out during the interval which elapsed between the notice of intention to work and the actual sale, inasmuch as section 69 provides for no apportionment. *In re Robinson's Settlement Trusts* (1891), 3 Ch. 129.

Transfer.—A transfer of a fund from one account to another is a payment out of Court, when the name of the account no longer includes that of the promoters. *Melling v. Bird*, 22 L. J. Ch. 599. *Re Bristol Grammar School*, 47 L. J. Ch. 317; *In re Buckingham*, 2 Ch. D. 690; cf. *Drake v. Graves*, 33 Ch. D. 609.

Trustees.—Trustees under settlements, whether with power of sale or not, are not persons absolutely entitled under section 69. The Settled Land Act, 1882, s. 21, sub-sect. 9, see *supra*, p. 157, provides that the money may be paid out to persons empowered to give an absolute discharge, and, reading these sections together, the Court has ordered money to be paid out to trustees of settlements. *In re Wright's Trusts*, 35 Ch. D. 662. *In re Harrop's Trusts*, 24 Ch. D. 717. *In re Rutland's*

Sect. 69. *Settlements*, 31 W. R. 947. *In re Rashmines*, 15 Ir. L. R. 576; cf., *Cooke's v. Cooke's* 34 Ch. D. 498.

Although the Court has jurisdiction to order the payment of the money to trustees, it is not bound to do so, but has a discretion, and may refuse. *In re Smith*, 40 Ch. D. 386, not following; *In re Hobson's Trusts*, 7 Ch. D. 708.

To clear up any doubt on this question, the Settled Land Act, 1890, enacts as follows:—

14. All or any part of any capital money paid into Court may, if the Court thinks fit, be at any time paid out to the trustees of the settlement for the purposes of the Settled Land Acts, 1882 to 1890.

Trustees of Charities.—There was some conflict among the cases as to whether the fund in Court could or could not be paid out to trustees of a charity. The decisions turned partly upon the question whether or not they had a power of sale, and whether the consent of the Charity Commissioners was required. Since the decision of *In re Smith*, 40 Ch. D. 386, cited *supra*, and the Settled Land Act, 1890, the Court has power to pay the money out where it sees fit, and probably in cases where the Charity Commissioners have jurisdiction the Court will require their consent, especially where the trustees have no power of sale. See the cases prior to *In re Smith*, *supra*; *Ex parte Trustees of Tid St. Giles' Charity*, 17 W. R. 758; *In re Spurtowe's Charity*, 18 Eq. 279; *In re St. Alphage*, 55 L. T. 314; *Re Faversham Charities*, 10 W. R. 291; *Ex parte Governors of Norfolk Clergy*, W. N. (1882), 53.

If the Charity Commissioners have no jurisdiction the money will be paid out to the trustees. Thus, a charitable corporation, partly supported by voluntary subscriptions, had purchased land with part of such contributions and sold it to a railway company, who paid the price into Court. The Charity Commissioners opposed the payment out to the trustees without their consent, but an order was made that the money be paid out, as the Commissioners had no jurisdiction. *In re Clergy Orphan Corporation* (1894), 3 Ch. 145.

The Court will, however, order the fund to be transferred to the account of the official trustees of charitable funds in trust for the charity, and this will be equivalent to a payment out. *Re Bristol, The Grammar School*, 47 L. J. Ch. 317; *Ex parte Bishop Marks' Horfield Trust*, 29 W. R. 462; *Re Rector of St. Alban's, Wood Street*, 66 L. T. 51.

Possessory Title.—As to the right of persons having possessory titles to have the fund in Court, see note to section 79, *post*, p. 192.

Tenants in tail.—When the money is paid out to a person who would have been tenant in tail of the land taken, there appears to have been some diversity of opinion as to whether a disentailing deed ought to be executed or not, but it would appear now to be settled that such a deed is necessary, although the practice formerly was not to require it. *In re Butler's Will*, 16 Eq. 479, per Lord SELBORNE, under the Lands Clauses Act, and followed as regards private settlements by JESSEL, M.R., in *In re Broadwood's Settled Estates*, 1 Ch. D. 438; and the Lords Justices in *In re Reynolds*, 3 Ch. D. 61, and in *Limerick and Ennis Railway Company*; *Ex parte Smyth*, I. R. 10 Eq. 66. For cases to the contrary, see *Re Row*, 17 Eq. 300; *In re Wood's Settlements*, 20 Eq. 215; *Re*

Holden, 1 H. & M. 445; *Notley v. Palmer*, 1 Eq. 241; *Re Holden's Estate*, 10 Jur. (N.S.) 308; *Re South Eastern Railway Company*, 30 Beav. 316.

As to whether a disentailing deed is necessary when the fund is small. See *R. v. Tylden*, 11 W. R. 869; *Re Watson*, 10 Jur. (N.S.) 1011; *Savery v. Savory*, 8 W. R. 339.

Where tenants had executed a disentailing deed, and had assigned the money in Court to trustees to such uses as they should appoint, they were held entitled to be paid the amount without executing the appointment. *Re Winstanley's Settled Estates*, 54 L. T. 840.

Married Women.—When money is paid into Court in respect of land to which a married woman is entitled absolutely, otherwise than by the Married Women's Property Act, it will be paid out to her on her own receipt, provided the amount does not exceed 500*l.*, and her husband consents. *Re Morton's Estate*, W. N. (1874), 181; *Andrews v. Tyrell*, 29 Sol. J. 622; *Seton* 77.

It may be paid out to her husband, whatever the amount, but in this case the must consent by deed acknowledged, or in exceptional circumstances, as when the married woman is abroad, the Court may allow the consent to be given upon examination. *In re Hayes*, 9 W. R. 789; *In re Tyler's Estate*, 8 W. R. 540; *In re Robins' Estate*, 27 W. R. 705; *In re Bell's Settled Estates*, 25 W. R. 901. When the amount has been small the Court has dispensed with these. *Re Clerk's Estate*, 13 W. R. 401; *Guest v. Neames*, W. N. (1884), 227; but see *White v. Herrick*, 4 Ch. 345; and see under the Partition Acts *Wallace v. Greenwood*, 16 Ch. D. 362.

See also notes to section 70, *post*, p. 175.

70. Such money may be so applied as aforesaid upon an Order for order of the Court of Chancery in England or the Court of application and investment *Exchequer in Ireland*, (a) made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; while. and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General in the purchase of three per centum consolidated or three per centum reduced bank annuities, or in Government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

(a) These words have been repealed by the Statute Law Revision Act, 1892. The Court of Chancery is now the Chancery Division of the High Court of Justice (Judicature Act, 1873).

"As aforesaid."—*I.e.*, according to section 69, and see notes thereto as to investing under the Settled Land Acts.

Sect. 70. "Of the Party who would have been entitled to the rents and profits."—In cases under settlements the proper person to apply is the tenant for life; the remaindermen need not be before the Court. *In re Browne*, 6 Ry. Cas. 733; *Ex parte Staples*, 1 De G. M. & G. 294; *Re Finch*, 14 L. T. 394. But in cases where the consent of the remainderman is necessary, as in cases of improvements, the remainderman should be before the Court. *Re Leigh's Estate*, 6 Ch. D. 887, 890, note; and see notes to section 69, *ante*, p. 152. As to service generally, see notes to section 80.

A remainderman has no right to apply to the Court that the money may be invested or transferred to the account of an action between the tenant for life and himself. *Nash v. Nash*, 37 L. J. Ch. 927. An annuitant was, under similar provisions in a private Act, held to be unable to petition for the application of the purchase money, although the annuity was charged on the land with power of entry and distress, the annuitant being considered merely an incumbrancer. *Ex parte Back*, 2 Y. & G. 386. The dividends have also been ordered to be paid to the owner on his petition, although the lands were subject to an annuity (*Ex parte Cofield*, 11 Jur. 1071), and have been ordered to be paid to him on the application of the owner and his annuitants, the latter agreeing not to distrain on the land taken. *In re Peddy's Estate*, 1 Jur. (N.S.) 654. And if the income of the fund is not sufficient to pay the annuity, the arrears and the annuity being required to be paid in full before the persons entitled, subject to the annuity, could claim anything, the annuitant was held to be entitled to have the deficiency made good out of the *corpus* by periodical sales. *Ex parte Wilkinson*, 3 De G. & Sm. 633.

When a tenant for life dies and another person becomes entitled to the rents and profits, a new application and a new order is necessary. *In re Joliffe's Estate*, 9 Eq. 668.

Prior to the Apportionment Act, 1870, the income arising from invested funds was not apportionable. *In re Lawton's Estates*, 3 Eq. 469. That Act, however, makes it so, and on the death of any person who was, by an order of Court, directed to be paid such dividends, the personal representatives may have payment made to them on proof of the death of the person by application at the Pay Office (Supreme Court Fund Rules, r. 62); and see *Chapman v. Chapman*, 17 Eq. 350.

Burial Grounds.—When the freehold of a burial ground is vested in a rector, and he has enjoyed the right to the burial fees, he is the person entitled under this section to apply for the investment and to receive the dividends, whatever may be the ultimate destination of the *corpus*, although the burial ground may have been closed for burials under an Order in Council, and at the time when it was taken may have been entirely unproductive. *Ex parte Rector of Liverpool*, 11 Eq. 15; *Ex parte Rector of St. Martin's, Birmingham*, 11 Eq. 23. As to the ultimate destination, see *Ex parte Vicar of St. Botolph's, Aldgate* [1894], 3 Ch. 544.

Where the ground was vested in the vicar and churchwardens, but the fees had been payable to certain church trustees by the churchwardens who received them in the first instance, an application for investment by the church trustees and payment of the dividends to them was refused; but on presentation of a second petition by the Attorney-General praying for a scheme, an order was made directing the dividends to be paid to the trustees, the Court holding that it had

jurisdiction upon the two petitions. *In re St. Pancras Burial Ground*, Sect. 70.
3 Eq. 173.

As to compensation for disused burial grounds, see now *Stebbing v. Metropolitan Railway Company*, L. R. 6 Q. B. 37, and note to section 63, *ante*, p. 112.

"Until the Money can be so applied it may . . . be invested."—By 23 & 24 Vict. c. 38, the Lord Chancellor, with the advice of certain judges, was empowered to make general orders as to the investment of cash under the control of the Court. That power is, by the Judicature Acts, transferred to the judges of the Supreme Court of Judicature, and the investment of cash under control of or subject to the order of the Court is governed by Order 22, Rule 17 of the Rules of the Supreme Court. The present rule came into operation on the 26th November, 1888, and it provides as follows:—

Order 22, r. 17: "Cash under the control of, or subject to, the order of the Court may be invested in the following stocks, funds, or securities, namely—

Two and Three-quarters per cent. Consolidated Stock (to be called after the 5th of April, 1903, Two and a-Half per cent. Consolidated Stock):

Consolidated Three Pounds per cent. Annuities:

Reduced Three Pounds per cent. Annuities:

Two Pounds Fifteen Shillings per cent. Annuities:

Two Pounds Ten Shillings per cent. Annuities:

Local Loans Stock under the National Debt and Local Loans Act, 1887:

Exchequer Bills:

Bank Stock:

India Three and a-Half per cent. Stock:

India Three per cent. Stock:

Indian guaranteed railway stocks or shares, provided in each case that such stocks or shares shall not be liable to be redeemed within a period of fifteen years from the date of investment:

Stocks of Colonial Governments guaranteed by the Imperial Government:

Mortgage of freehold and copyhold estates respectively in England and Wales.

Metropolitan Consolidated Stock, Three Pounds Ten Shillings per cent.:

Three per cent. Metropolitan Consolidated Stock:

Debenture, preference, guaranteed, or rentcharge stocks of railways in Great Britain or Ireland having for ten years next before the date of investment paid a dividend on ordinary stock or shares:

Nominal debentures or nominal debenture stock under the Local Loans Act, 1875, provided in each case that such deben-

Sect. 70. ture or stock shall not be liable to be redeemed within a period of fifteen years from the date of investment :

Rule 18: Every application for the purpose of the conversion of any stocks, funds, or securities into any other stocks, funds, or securities authorised by the last preceding rule, shall be served upon the trustees thereof (if any), and upon such other persons (if any) as the court or judge may think fit.

There existed for some time a doubt as to whether money paid into Court under the Lands Clauses Act was "cash under the control of the Court" within the meaning of 23 & 24 Vict. c. 38, and, consequently, it was doubtful whether the money would be invested in the securities mentioned in the orders made pursuant thereto. It is now settled that such money is cash under the control of the Court. *Ex parte St. John the Baptist College, Oxford*, 22 Ch. D. 93, where the previous authorities are cited and discussed. This case has been followed in the case of *Re Brown*, 59 L. J. Ch. 530, where the investment was altered into preference stock of a railway company under the above order. For a case under a private Act, see *Jackson v. Tyas*, 52 L. J. Ch. 830.

When the money is paid in, in respect of settled land, it may be invested by sections 32 and 21 (1) of the Settled Land Act, 1882, *ante*, p. 155, in securities which the trustees of the settlement are by the settlement or by law authorised to invest trust money. See *In re Hanbury's Trust*, W. N. (1883) 110.

"**Accountant-General**" is now the Paymaster-General. See note to section 69, *ante*, p. 145.

The Paymaster-General's authority for carrying out the order is the schedule to the order, a copy of which is directed to be sent to him by the registrar, who draws up and enters the order. Supreme Court Fund Rules (1886), 23—25. The paymaster, on receipt of the copy schedules, forthwith draws up the necessary directions for payment out of the money or for investment. Sales of securities in pursuance of an order, of which a copy has been received in the pay office, shall be made by the paymaster upon application by or on behalf of the persons interested therein, and such application may be sent by post (Rule 47). The official broker must be employed.

Formerly it was necessary to take the original order to the pay office, and to request that each particular direction should be carried out when required, and the solicitor might be made personally liable if he neglected to do so. See *Batten v. Wedgwood Coal and Iron Company*, 31 Ch. D. 346. The Consolidated Fund of the United Kingdom is liable to make good the default of the Paymaster-General. Chancery Funds Act, 1872, section 5 ; and see *Slater v. Slater*, 58 L. T. 149.

Applications for Investments.

Petition or Summons.—The procedure is now regulated by Order LV., rule 2, sub-sections (1), (2), (3), and (7), which are set out hereunder.

From these it appears that applications for interim and permanent investments should now be made in chambers by summons, except in difficult cases or where for other reasons procedure by petition is cheaper. Applications for payment out or transfer should also be made by summons if the amount is under 1,000*l.*, or where there has been a

judgment or order declaring the rights or where the title depends only upon proof of the identity, or the birth, marriage, or death of any person. In other cases the procedure will still be by petition. **Sect. 70.**

Rules of Supreme Court, Order LV.

R. 2. The business to be disposed of in chambers by judges of the Chancery Division, shall consist of the following matters, in addition to the matters which under any other rule or by statute may be disposed of in chambers :

- (1.) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where there has been a judgment or order declaring the rights or where the title depends only upon proof of the identity or the birth, marriage, or death of any person :

This sub-section is not restricted or qualified in its operation by any of the following restrictions, so that when money has been paid into Court under the Lands Clauses Act and the rights of the parties have been declared by previous orders of the Court, the application for payment out or transfer should be made by summons, although the amount exceed 1,000*l.* *In re Brandram*, 25 Ch. D. 366 ; *Re Broadwood*, 55 L. J. Ch. 646 ; cf. *Re Barker*, W. N. (1884) 237.

Where the amount exceeds 1,000*l.* and there is no real difficulty, the title depending only upon proof of identity and birth of applicant, the application should apparently be made by summons. *Bates v. Moore*, 38 Ch. D. 381 ; *Re Broadwood*, 55 L. J. Ch. 646 ; but see to the contrary *Re Rhodes*, 31 Ch. D. 499. But if there has been no order declaring the rights of the parties, and the title does not depend only on the proof of the death of any person, the application should be made by petition. *Re Evans*, 54 L. T. 527.

If the title involves also a question of construction of a will or other instrument, it would appear to be doubtful whether application should be made under this rule or not. KEKEWICH, J., in *Re Hicks*, 70 L. T. 529, decided it could not, but also stated that there was a diversity of opinion as to this among the judges of the Chancery Division.

Where the application has been made by summons but the proper procedure was by petition, the costs of the summons may be allowed on the petition if the application by summons was made reasonably. *In re Jelland's Trusts*, W. N. (1888) 42.

- (2.) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where the cash does not exceed 1,000*l.* or the securities do not exceed 1,000*l.* nominal value :

Applications for payment or transfer of sums paid into Court under the Lands Clauses Act when under 1,000*l.* should now be made by summons. *Ex parte Maidstone, &c., Railway Company*, 25 Ch. D. 168,

Sect. 70. in which case the money was paid in under section 85 of the Lands Clauses Act. *In re Madgwick*, 25 Ch. D. 371 ; *In re Calton's Will*, 25 Ch. D. 240.

Where several sums were in Court, paid in by several public bodies in respect of charity lands and application was made for transfer of the whole amount into the names of the official trustees of charitable funds, the application was held rightly to have been made by petition, although some of the funds paid in were under 1,000*l*. *Re the Rector of St. Alban's, Wood Street*, 66 L. T. 51. The costs payable by those bodies who have paid in sums under 1,000*l*. would probably be limited to the amount of the costs or summons. *Attorney-General v. St. John's Hospital, Bath* (1893), 3 Ch. D. 151 ; and see section 80, *post*.

Where the fund in Court exceeds 1,000*l*., but the share of the applicant is less than 1,000*l*., it would appear that the application should be by petition. *May v. Dowse*, W. N. (1884) 122 ; *Re Evans*, 54 L. T. 527.

Where the cash in Court and the nominal value of the securities together exceed 1,000*l*., the proper procedure is by petition. *Re Harcorth*, W. N. (1885) 48.

Where the cash paid in does not exceed 1,000*l*., but when the interest accrued is added thereto the amount exceeded 1,000*l*., a petition would appear to be proper. *Ex parte Trustees of Finsbury Savings' Bank*, W. N. (1886) 150.

Where the costs of a petition are not more than would have been incurred on a summons, they will be allowed (*In re Arnold*, W. N. (1887) 122 ; *In re Earl de Grey's Estate*, W. N. (1887) 241), and if procedure by summons be the proper course, the applicant who proceeds by petition will be at least allowed thereon costs equal to that which he would have incurred on summons. *Re Broadwood*, 57 L. J. Ch. 646.

- (3.) Applications for payment to any person of the dividend or interest on any securities standing to the credit of any cause or matter, whether to a separate account or otherwise :

As to the parties entitled to dividends or interest, see this note, "Of the party who would have been entitled to the rents and profits," p. 166, *supra*.

- (7.) Applications for interim and permanent investment and for payment of dividends under the Lands Clauses Consolidation Act, 1845, and any other Act whereby the purchase money of any property sold is directed to be paid into Court :

Although the Lands Clauses Act provides that such applications shall be made by petition, that proviso is, nevertheless, repealed by the above rule. *Ex parte Mayor of London*, 25 Ch. D. 384.

Where funds paid into Court by a railway company for land belonging to a college are applied for to be laid out in college buildings, the application should be by petition, as it is practically a payment out to a body who undertake to apply it in a certain way. *Ex parte Jesus College, Cambridge*, 50 L. T. 583.

Where applications are made that the money paid in under the Lands Clauses Act may be applied in improvements under the Settled Land Acts, the proper procedure would appear to be by summons, but if it is

cheaper or more expeditious to proceed by petition, the applicant may **Sect. 70.** proceed in that way, and will be allowed the costs of a petition. His choice, however, rests with himself and he makes it at his own peril. In *n Bethlehem and Bridewell Hospitals*, 30 Ch. D. 541; and see CHITTY, J., in *Re Broadwood*, 55 L. J. Ch. 646, on the cases where petitions are preferable to summonses.

Applications for investment may be made by petition if the matter is complicated (*Re Stafford's Charity*, 57 L. T. 846; *Re Jackson*, W. N. (1894) 50), or if it is not more expensive (*Re de Grey's Estate*, W. N. (1887) 241; *Re Hargreave's Trust*, 58 L. T. 367).

Where on petition a sum is ordered to be paid out to be applied in the construction of a sewer, and it is found that a further sum under 1,000*l.* is necessary, the proper procedure is to apply by supplemental petition, and the body paying in will be ordered to pay the costs of both. *Re Sanders*, 70 L. T. 755.

Practice Generally.—*Death of Party applying.*—After an order had been made for enquiries, on a petition for payment out, the sole petitioner died, but leave was given to the executors to carry on the petition. In *re Atkin's Estate*, 1 Ch. D. 82; *Re Youl*, 16 Eq. 107. Similarly, where a rector died, the proceedings were carried on with the consent of the new rector. *Ex parte Rector of Lea*, 21 L. J. Ch. 226; and see *Re Staggoll*, 15 W. R. 974.

Before the Judicature Acts a petitioner was substituted in a case where the petitioner died after a petition under the Leases and Sale of Settled Estates Act had been served and advertised. In *re Wilkinson's Settled Estates*, 9 Eq. 71.

By Order 17, r. 4, of the Rules of the Supreme Court, the order for a new party is obtained *ex parte* in the Chancery Division by petition "of course" at the registrar's chambers, or motion handed to the registrar in Court.

Consent of Charity Commissioners.—The sanction of the Charity Commissioners is not required for a re-investment of a fund belonging to a charity. *Re Lister's Hospital*, 6 D. M. & G. 184, as to which see *Braund v. Earl of Devon*, 3 Ch. 800, p. 806; In *re Cheshunt College*, 1 Jur. (N.S.) 995; cf. In *re St. Giles' Volunteer Corps*, 25 Beav. 313; *Re William of Kyngeston's Charity*, 30 W. R. 78. As to whether their sanction is required when the money is paid out or applied under the Act, see notes to section 69, *ante*, p. 164.

As to the consent of the Board of Agriculture in the case of money in Court in respect of land belonging to a college, see *Ex parte King's College, Cambridge* [1891], 1 Ch. 333.

Dealing with other Funds on same application.—If there are other funds in Court besides that paid in under the Lands Clauses Act, they may be dealt with on the same application. *Re Southampton and Dorchester Railway Company*; *Ex parte King's College, Cambridge*, 5 De G. & Sm. 621. Similarly funds paid in by different companies under the Lands Clauses Acts may be dealt with on the same application (*Ex parte Sheffield*, 21 Beav. 162), and when two funds paid into Court under the Lands Clauses Act have been dealt with by different Judges of the Chancery Division, the Court will give leave to present one petition in both matters in one Court. In *re Lord Arden's Estates*, 10 Ch. 445, and see *Re Browne*, 14 L. T. (N.S.) 37. And where both funds are to be

Sect. 70. invested together in the purchase of land, the proper course is to make one application, and if two are made the costs of one only may be allowed. *In re Gore Langton's Estates*, 10 Ch. 328.

Where an order has been made in one branch of the division subsequent applications should be made to the same branch. Order 5, r. 9 (2), of the Rules of the Supreme Court.

The transfer from one judge of the Chancery Division is made by the Lord Chancellor, under Order 49, r. 1, and not by the Lords Justices as formerly. *Re Boyd*, 1 Ch. D. 12, and see Memorandum, 1 Ch. D. 41. The usual course is to obtain the consent of the parties in writing and enter a petition to the Lord Chancellor, which is left with his secretary at the House of Lords. If consent of the parties is not obtained, application should be made to the Lord Chancellor in Court. See Memorandum, 1 Ch. D. 41.

Service.—As to the persons who ought to be served. see notes to section 80, where the question of costs is dealt with.

Form of Petition or Summons.—When the company apply for the payment out on behalf of the person entitled, the petition or summons should be sealed with the seal of the company. *Ex parte Maidstone Railway Company*, 25 Ch. D. 168; *In re Madgwick*, 25 Ch. D. 371.

The summons should be an originating summons, unless there has been any previous dealing with the fund, then an ordinary summons is required. See "Daniel's Chancery Forms," 2093, *et seq.* By Rule 3 of the Supreme Court of August 18th, 1894, r. 11 (Order 70, r. 1, A), "Originating summons" means every summons other than a summons in a pending cause or matter. By rule 3 of the rules of August, 1894 (Order 54, r. 4, B), an originating summons is required to be in the forms No. 1, A, B, G, or H, Appendix K, with such variations as circumstances require. It is to be prepared by the applicant or his solicitor, and sealed in the central office, such sealing to be deemed the issue; the person obtaining the summons must leave at the central office a copy, which shall be filed and stamped. The stamp is 10s. The name and address of applicant must be given, and a certificate is required that no previous application has been made in the matter.

The practice on originating summons is regulated by Rules of the Supreme Court, Order 54; Order 54, A; Order 54, B.

Title to Summons or Petition.—From the table of titles given in the Annual Practice, 1895, p. 1,242, as adopted by the Practice Masters, it is provided that in all cases where a petition is presented, or an originating summons is issued under the authority of an Act of Parliament, the petition or summons must be entitled in a substantial matter (as the first title), and also in the matter of the particular Act as well as any general Act applicable. If it be a railway or other local Act, and under its powers a portion of any estate under settlement, or of any estate of any testator or intestate has been taken, the petition or summons must be entitled in the matter of such settlement, or of the estate of such testator or intestate, and in the matter of the credit to which the money has under the special Act been paid, and in the matter of the general Act or Acts.

The following examples are given :—

Example I.

1886, W., No. .

In the matter of the Estate of George Woolley, deceased.

Ex parte the South Devon Railway.

In the matter of the South Devon Railway Act, 1844, the vendors, John Smith and Robert Stiles, trustees of the estate of George Woolley, deceased, vendors without power of sale, and

In the matter of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869 (as the case may be).

Example II.

1886, T., No.

In the matter of the Estate of William Thomas, an infant.

Ex parte the Metropolitan Board of Works.

In the matter of the Metropolitan Street Improvement Act, 1883.

The vendor, William Thomas, an infant.

In the matter of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869.

Example III.

1886, I., No. .

In the matter of the trusts of the settlement made on the marriage of John Jarvis and Sarah, his wife.

Ex parte the Metropolitan Board of Works.

In the matter of the Metropolitan Street Improvement Act, 1883.

The vendors, John Smith and Robert Jones, trustees of settlement of John Jarvis and Sarah his wife, without power of sale.

In the matter of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869.

If land belonging to a rector, vicar, or other corporate body, then it must be entitled, *ex parte* the rector, vicar, or corporate body, as the case may be, and in the matter of the Act or Acts, thus :—

Example IV.

1886, W., No. .

Ex parte the Rector of Woolwich, in the county of Kent.

Ex parte the South Eastern Railway Company.

In the matter of the South Eastern Railway Act (Additional Powers), 1882. The vendor, Rector of Woolwich, without power of sale.

In the matter of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869.

Sect. 70. Evidence.—An affidavit of title is required by Order 52, r. 18, which is as follows :—

Rule 18 : In the case of applications under Acts of Parliament directing the purchase money of any property sold to be paid into Court, any persons claiming to be entitled to the money so paid in must make an affidavit not only verifying their title, but also stating that they are not aware of any right in any other person, or of any claim made by any other person, to the sum claimed, or to any part thereof, or, if the petitioners are aware of any such right or claim, they must in such affidavit state or refer to and except the same.

A tenant for life must state that no other person is entitled. *Re Milne's Estate*, 8 L. T. (N.S.) 199. An affidavit is usually required, even though the application deals with the income only and is made by a large public body. *Ex parte St. Mary's College, Winchester*, 14 W. R. 788 ; *Re Byron's Charity*, W. N. (1883) 67. The affidavit of the clerk of the trustees of a public charity has been held sufficient (*Re Edward VI. Almshouses*, 16 W. R. 841), and in one case the affidavit has been dispensed with. *Re Magdalen College, Oxford*, 42 L. T. 822.

The affidavit by the tenant for life has been dispensed with when the tenant was very old and infirm, and the executors of the will under which she claimed had made an affidavit. (*Re Smith's Leaseholds*, 14 W. R. 949 ; but see *Ex parte Hollick*, 4 Ry. Cas. 498.)

The affidavit ought not to be made by the solicitor of the applicant, but by the applicant himself. *Re London and North Western Railway Company*, 1 W. R. 60. But in case of illness the order has been made on the affidavit of the solicitor. *In re Halsey's Estate*, W. N. (1870) 68.

The affidavit of one of four joint mortgagees has been held sufficient (*In re Vale of Neath Railway Act*, W. N. (1866) 78), and where ten persons applied for payment out of the fund, being each entitled to a share in the fund under a will, the affidavit of the surviving trustee of the will was held sufficient. *In re Batty's Trusts*, W. N. (1877) 212.

When a person claims to be entitled to a fund on his attaining 21, the affidavit of an independent person is usually required as to his age, but an affidavit by himself verifying his certificate of baptism has been accepted. *In re Bulley's Settlement*, W. N. (1886) 80.

Proof of no incumbrance.—Where money in court represents real estate there must be an affidavit that there are no incumbrances. In applications for payment out of money under the Lands Clauses Acts such affidavit is always required, and it ought to be made by the applicant. A tenant in tail, for example, who executes a disentailing deed and so becomes entitled to payment out, should make such an affidavit. *Williams v. Ware*, 57 L. J. Ch. 467 ; *Thornhill v. Millbank*, 12 W. R. 523.

Married Woman.—In cases prior to the Married Women's Property Act, 1882, where the fund belonged to a married woman or widow, an affidavit of no settlement was required. *Elrington v. Elrington*, 4 Drew.

545. The affidavit was required to state either that there was no settlement at all, or that there was a settlement (which had to be produced), and that it did not affect the fund. It was not sufficient to say that the fund was not settled. *Britten v. Britten*, 9 Beav. 143, see note thereto for form of affidavit. The affidavit of no settlement in the case of married women, was required to be made by the husband and wife, but when the husband was abroad the Court has acted on the affidavit of the wife only. *Elliot v. Remington*, 9 Sim. 502; *Wilkinson v. Schneider*, 9 Eq. 323; *Ewart v. Chubb*, 20 Eq. 454. When both husband and wife were abroad the affidavit of their solicitor was accepted. *Woodward v. Pratt*, 16 Eq. 127. In case of very small amounts the affidavit has been dispensed with. *Veal v. Veal*, 4 Eq. 115; *Guest v. Neames*, W. N. (1884) 227. Sect. 70.

As the Married Women's Property Act, 1882 (section 19), expressly excepts settlements, the old practice is still continued, and an affidavit of no settlement is required to be made by the husband and wife.

In case of a woman marrying or becoming a widow after the order has been made, Rule 61 of the Supreme Court Fund Rules, 1886, provides as follows:—

Rule 61: When funds in Court are by an order directed to be paid, transferred, or delivered, to a woman in her own right who is not married at the date of the order, or who, being married at that date, shall become a widow, and such woman shall marry before payment, transfer or delivery of such funds, upon an affidavit of such woman and her husband that no settlement whatsoever has been made or entered into, before, upon, or since their marriage, or in case any such settlement or agreement for a settlement has been made or entered into, then upon an affidavit of such woman and her husband identifying such settlement or agreement for a settlement, and stating that no other settlement or agreement for a settlement has been made or entered into as aforesaid, and an affidavit of the solicitor of such woman and her husband that such solicitor has carefully perused such settlement or agreement for a settlement, and that, according to the best of his judgment, such funds are not, nor is any part thereof, subject to the trusts of such settlement or agreement for a settlement, or in any manner comprised therein or affected thereby, such funds shall be paid, transferred, or delivered to such woman without the intervention or concurrence of her husband in the same manner as if she had remained unmarried.

Time for Application.—The tenant for life is entitled to the dividends of the purchase money, if the promoters of the undertaking have taken possession. He is, therefore, entitled to apply for investment of the fund in Court, although the conveyance has not been executed, unless he has behaved in a manner to disentitle him to such dividends. *Re Wrey's Settlement*, 13 W. R. 543, and see *Re Hungerford*, 1 K. & J. 413. The dividends have also been ordered to be paid to the tenant for

Sect. 70. life, although there was a dispute as to the parties to the conveyance.
 — *Ex parte Cofield*, 11 Jur. 1071.

Forms of Order.—For forms, see 3 Seton, 5th edit., 2011, *et seq.*

1. Orders to pay dividends.

Private Trustees.—The Court may direct the payment of the dividends to the trustees or either of them. This is not an unusual form. *In re Clinton*, 6 Jur. (N.S.) 601; *In re Coulson*, W. N. (1867) 233; *In re Pryor's Settlement*, W. N. (1876) 141; *In re Foy's Trusts*, 23 W. R. 744. It would appear, however, that if new trustees are substituted for the old ones that a new application would be necessary under such an order, and it would be better that the order should direct payment to the trustees or to the survivors or survivor, and after the death or retirement or discharge of these trustees then to the trustees for the time being of the settlement. See *In re Metropolitan Railway Company and Maire*, W. N. (1876) 245; *In re God's Estate*, 3 W. R. 119; *In re Pryor*, W. N. (1876) 141.

Co-partners.—When money is ordered to be paid to any persons as co-partners, such money may be paid to any one or more of such co-partners, or to the survivor of them. Supreme Court Fund Rules, 1886, r. 63.

Legal Representatives.—When money in Court is ordered to be paid to any persons as legal representatives, it may be paid to the survivors or survivor on proof of the death of any of such representatives. Supreme Court Fund Rules, 1886, r. 64.

Successive Life Tenants.—On the petition of a man and his wife who had successive life interests an order was made for payment to the wife for life, and after her death to the husband for his life. *In re How's Trust*, 15 Jur. 266. A similar order was made in the case of a mother and daughter, but the Court refused in the same order to direct the transfer of the fund on the death of the survivor. *In re Lowndes' Trust*, 21 L. J. Ch. 422, and see to the same effect *In re Brent's Trust*, 8 W. R. 270. If the order is not so made a fresh application will be necessary. *In re Jolliffe's Estate*, 9 Eq. 668.

Charities.—The order may be made for payment of the dividends to any two of the present trustees or to any two of the trustees for the time being. *In re Collins Charity*, 20 L. J. Ch. 168.

The dividends have also been ordered to be paid to the secretary, and to his successors, the secretaries for the time being of the trustees of the charity, there being no treasurer. *Re Codrington's Charity*, 18 Eq. 658.

Ecclesiastical Property.—Where church land had been taken the dividends were ordered to be paid to the then vicar of the parish, and the churchwardens and overseers of the poor for the time being or either of them. *Ex parte Churchwardens of Bicester*, 5 R. C. 702.

Where money was in Court in respect of the purchase of land belonging to the Archbishopric of Canterbury, an order was made directing the dividends to be paid to the present Archbishop, so long as he shall continue Archbishop of Canterbury, and afterwards to the Archbishop

of Canterbury for the time being. *Ex parte Archbishop of Canterbury*, **Sect. 70.**
5 R. C. 692.

In case of lands held by corporations solely for charitable purposes the order usually directs the payment of the dividends to the rector or vicar for the time being. See *Re Davenant*, 2 W. R. 344; *In re Pearce*, 34 Beav. 491; *Re St. Benet's*, 12 L. T. (N.S.) 762; *Attorney-General v. Broadeth*, 1 Y. & C. C. 200; Order, p. 202.

2. Form of Order for Application of Moneys.

For forms of order directing the application of the moneys in Court in discharge of incumbrances, in investment in land, erection of buildings or other improvements, and for payment out to persons absolutely entitled, see Seton, 5th edit., pp. 2017—2029.

In cases of re-investment in land the usual form is to approve the investment, and direct an enquiry as to whether a good title can be made, and, if so, to direct a conveyance, to be settled by the judge, and on the execution thereof direct the fund in Court to be dealt with as directed in the schedule. See *Ex parte Franklin*, 1 De G. & Sm. 528; *Ex parte Metherell*, 20 L. J. Ch. 629.

In some cases where the amounts are small or for other reasons the inquiry has been dispensed with. Seton, p. 2020, and cases there cited which are not reported. *Re Blomfield*, 20 W. R. 37.

A provisional contract is usually made prior to application, and evidence of fitness stating the nature of and facts relating to the land is produced at the time of application. *Re Kinsey*, 1 N. R. 303; *In re Cadell*, 9 Hare App. 4. The enquiry as to title is a general one, and not merely as to whether it is good according to the conditions of sale. *Upperton v. Nickolson*, 6 Ch. 436; *Lawrie v. Lees*, 14 Ch. D. 249, 255; *Meyrick v. Laws*, 34 Beav. 58. As to what title will be accepted. *Re Sheffield and Rotherham Railway Company*, 1 Sm. & G. App. 4; *Ex parte Vicar of East Dereham*, 21 L. J. Ch. 677. As to the procedure in investigating the title, see Daniel's "Chancery Practice," 6th edit., pp. 1039—1042; 2 Seton, 5th edit., 1453.

71. If such purchase money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the bank, and applied in the manner hereinbefore directed with respect to sums amounting or to exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but

Sums from
20l. to
200l. to be
deposited
or paid to
trustees.

Sect. 71. such last-mentioned application of the moneys shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose ; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of the Court for that purpose.

“*Such purchase Money*” means the money referred to in section 69.

“*In the Manner hereinbefore directed,*” i.e., pursuant to sections 69 and 70. As to sums paid under contract with persons not absolutely entitled, see section 73.

“*Shall not amount to Two hundred pounds.*”—When the money does amount to 200*l.*, sections 69 and 70 apply. Where the amount paid into Court exceeded 200*l.*, but after an investment in the purchase of land, a sum of 70*l.* only remained, that sum was paid out to two trustees nominated under this section by the tenant for life. *Re Kinsey*, 1 N. R. 303.

In one case where the residue was 30*l.*, the Court allowed it to be paid out to the tenant for life on his undertaking to lay it out in permanent improvements. *Ex parte Barrett*, 19 L. J. Ch. 415. But, generally, the Court will not allow the amount to be paid out to the tenant for life, when it exceeds 20*l.* *In re Bateman*, 21 L. J. Ch. 691. As to cases where the residue is 20*l.*, or under, see next section.

Sums not exceeding 20*l.* to be paid to parties.

72. If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit, or in case of the coverture, infancy, idiotcy, lunacy, or other incapacity, of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

“*The same shall be paid to the parties entitled,*” &c.—As to who are the parties, see note to section 70, *ante*, p. 166. Where the residue of the fund in Court, after an investment in land, does not exceed 20*l.*, it will be paid out to the party entitled to the rents and profits. *Re Lord Egremont*, 12 Jur. 618. *Ex parte Rector of Loughton*, 5 R. C. 591. *Re Hitchin's Estate*, 1 W. R. 505 ; cf. *Vicar of Bredicot*, 5 R. C. 209.

Coverture.—Since the Married Women's Property Act, 1882, this section will not be applicable to such property as a married woman has power of disposing of under that Act. Section 1, sub-section (1).

73. All sums of money exceeding twenty pounds, which Sect. 73.
 may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the Bill authorising the taking of such lands; but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Court of Chancery [*in England or the Court of Exchequer in Ireland*], (a) or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

All sums payable under contract with persons not absolutely entitled, to be paid into bank.

(a) These words were repealed by the Statute Law Revision Act, 1892.

"All Sums of Money exceeding 20*l.*": cf. this with sections 70 and 71, *ante*, pp. 165, 177.

"Under a Contract."—See section 7, and notes thereto, *ante*, p. 19.

This section in no way affects the right of persons under disability to contract with promoters of an undertaking. A tenant for life may enter into any agreement that so much money shall be paid to him for compensation by severance or otherwise. The mere fact that the agreement makes it payable to him will not vitiate the contract. The section only applies as between him and the parties entitled to the inheritance.

Sect. 73. If he receive it, he holds it in trust for them according to the provisions of the statute. The promoters however, should pay the money into Court, and this will be a fulfilment of the agreement to pay to him; the Court having power to allot to him such portion of the sum as compensation for such injury as he may sustain. *Taylor v. Chichester and Midhurst Railway Company*, L. R. 4 H. L. 628.

"To retain to his own use."—A tenant for life who retained for his own use the sum of 3,000*l.*, paid to him in consideration of not opposing a line of railway was ordered to pay it into Court. *Pole v. Pole*, 2 Dr. & Sm. 420, and see cited in note, *supra*.

Where the promoters agreed to pay the tenant for life interest at 5 per cent. on the purchase money from the date of the agreement until a conveyance should be executed, the tenant for life was allowed to retain it in the absence of any fraud. *In re Hungerford*, 1 Jur. (N.S.) 845.

"To allot . . . a portion . . . for any injury," &c.—Where part of a manor was taken, the lord of the manor who was tenant for life claimed a portion of the money paid into Court as representing the fines for enfranchising, as copyhold lands when taken under this Act are required to be enfranchised by section 96 (see *post*, and note thereon). But as no fees are paid for enfranchisement under that section, it was held that he was entitled to no portion of the fund in Court. The tenant for life gets instead the interest on the money paid in for compounding all fines, rents, and other services. *Re Sir T. M. Wilson's Estates*, 32 L. J. Ch. 191.

A claim by a tenant for life without impeachment of waste in respect of minerals under the estate, which might have been worked out in his life, was also refused, and the income only ordered to be paid to him. *In re Robinson's Settlement Trusts* [1891], 3 Ch. 129.

Where a company, in order to obtain the withdrawal of opposition to a bill, agreed to pay a sum of money for the construction of a new road, and paid the same into Court, a claim to have this sum paid to the tenant for life was refused, but an enquiry directed as to what part of that sum ought to be paid to him for his expenses in making the new road, and the rest was ordered to be invested. *Re Duke of Marlborough's Estates*, 13 Jur. 738.

Small sums have been paid to the tenant for injury, inconvenience, and annoyance. *Ex parte Rector of Little Steeping*, 5 R. C. 207. *Re Collis's Estate*, 14 L. T. (N.S.) 352, where the jury had assessed the amount for such inconvenience.

In respect of Costs arising under the Act.—The Lands Clauses Act constitutes the tenant for life an agent, and imposes upon him the duty of doing the best he can for the estate; he is, therefore, entitled to be repaid all costs and charges properly incurred by him in so doing.

Thus, if he has to pay the costs of an arbitration for ascertaining the price of land taken, owing to the company having offered more than the amount awarded, he will be allowed these costs out of the fund in Court if he was justified in requiring an arbitration. *In re Earl of Berkeley's Will*, 10 Ch. 56. *In re Aubrey's Estate*, 17 Jur. 874. Such costs have also been allowed to a perpetual curate. *Ex parte Whitworth*, 24 L. T. (N.S.) 126.

Costs of preliminary negotiations will also be allowed. *In re Strathmore Estates*, 18 Eq. 339. *In re Oldham's Estate*, W. N. (1871) 190. **Sect. 73.**

Where the company after paying the purchase money of glebe lands into Court, were ordered to pay the costs of investment, but became insolvent before doing so, an order was made for sale of some of the fund in Court for the purpose of paying the rector's costs. *In re Glebe Lands of Yddham*, 9 Eq. 68.

A mortgagee will probably be allowed out of the fund the costs of an inquiry as to the value of the land beyond those allowed on taxation between the public body and himself, but the Courts do not make a special order in respect thereof, but the ordinary enquiry will be ordered and would appear sufficient if the extra costs have been properly incurred. See *Rees v. Metropolitan Board of Works*, 14 Ch. D. 373. *Blackford v. Davis*, 4 Ch. 304.

In respect of Costs of Opposing a Bill.—The costs of opposing a bill in Parliament cannot be allowed out of the fund in Court under the Lands Clauses Act, because no duty to do so is imposed by that Act upon him. *In re Earl of Berkeley's Will*, 10 Ch. 56, but see *In re Nicholl's Estate*, W. N. (1877) 154.

The Settled Land Act, 1882, section 36, however, enacts as follows:—

36. The Court may, if it thinks fit, approve of any action, defence, petition to Parliament, parliamentary opposition, or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement, and may direct that any costs, charges, or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement.

It has also been held that the Court, under its general jurisdiction, had power to direct the payment of costs of opposing a bill out of the capital money, and has so ordered when the costs were incurred prior to 1883. *In re Ormrod's Settled Estate* (1892), 2 Ch. 318.

In the case of a municipal corporation, see *Attorney-General v. Mayor of Brecon*, 10 Ch. D. 204.

Practice.—The practice will be governed by the same rules as in the case of proceedings under section 70; see note "Applications for Investment," ante, p. 168.

In cases where the tenant for life claims a portion of the fund under this section, the remainderman should be either made a co-petitioner or should be served. *In re Strathmore Estates*, 18 Eq. 339; *Re Collis's Estate*, 14 L. T. (N.S.) 352.

74. Where any purchase money or compensation paid into the bank under the provisions of this or the Special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery (in England or the Court of Exchequer in Ireland), (a) on the petition of any party inte- Court of Chancery may direct application of money in respect of leases or reversions as they may think just.

Sect. 74. rested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

(a) These words have been repealed by the Statute Law Revision Act, 1892.

This section is substantially the same as section 34 of the Settled Land Act, 1882; the latter being apparently copied from section 74. Decisions on the effect of one of those sections will, therefore, be authorities in respect of the other. See *Cottrell v. Cottrell*, 28 Ch. D. 628.

"Under the Provisions of this or the Special Act."—This refers to sections 69, *ante*, p. 143, and 76, *post*, p. 186.

"Laid Out, Invested."—As to investments, see notes to sections 69 and 70.

Where certain leasehold houses were bequeathed to a person for life, and on death to certain other persons, the purchase money was allowed to be laid out in the purchase of copyhold lands to be held by two trustees upon trust for the leaseholder for life, and on her death upon trust to sell and hold the moneys for the persons entitled. *In re Coyte's Estate*, 1 Sim. (N.S.) 202.

Similarly, the purchase money of leaseholds has been allowed to be laid out in purchase of the absolute reversion in fee of other leaseholds, the land being conveyed to a trustee for the persons interested (being infants), their executors and administrators, until they should attain 21, and afterwards to them and their heirs. *In re Brasher's Trust*, 6 W. R. 406.

The Court will sanction the money being laid out in the purchase of freeholds if the proposed investment is substantially a settlement to like uses. *In re Parker's Estate*, 13 Eq. 495.

"In Respect of any Lease."—The construction of this section appears to have been discussed in the Court of Appeal for the first time in *Askew v. Woodhead*, 14 Ch. D. 27. Taking the simple case of a leasehold settled upon a person for life, with a limitation over on his death, and another person absolutely, the parties interested would get the same benefit as nearly as may be, said JESSEL, M.R., "by investing the money in the purchase of an annuity having as many years to run as there were years remaining in the term, and by paying it to the tenant for life, and after his death, if the tenant for life dies within the term, then to the remainderman. Generally an annuity cannot thus be purchased which will bring in as large an income as the leasehold, but sometimes it can. The same principle must apply whether it is more or less. If an annuity is not actually bought it must be referred to an actuary to calculate what yearly sum, if raised out of the dividends and corpus of the fund, will exhaust the fund in the number of years which the lease had to run" (p. 34). This yearly sum will be ordered to be

paid to the tenant for life till the end of the term or till his death. **Sect. 74.** There is nothing in the Act which says that the tenant for life is only to receive the same income as before. The case of "*In re Pfleger*," 6 Eq. 496, where the order directing an annuity equal to the previous income to be purchased, was not approved. *In re Phillip's Trust*, 6 Eq. 250, was approved (p. 36). Notwithstanding that a previous order had been made, Kay, J., made an order *In re Hunt's Estate*, W. N. (1884) 181, dividing the fund according to the principle laid down in the above case of *Askew v. Woodhead*. This case has also been followed in Ireland, the interest being taken at 3 per cent., and the sums calculated for half-yearly payments. *In re Walsh's Trusts*, 7 L. R. Ir. 554; *In re South City Market Company*, 13 L. R. Ir. 245.

For an order framed on this principle, see 3 Seton, 5th edit., p. 2030.

Other methods of distribution will not now be allowed save by consent. For methods of division prior to *Askew v. Woodhead*, see *Re Teacher's Settlement*, 18 L. T. (N.S.) 810; *Littlewood v. Pattison*, 10 Jur. (S.S.) 875; *Jeffrey v. Conner*, 28 Beav. 328; *Re Birch*, 10 Jur. (N.S.) 673; *Re North*, W. N. (1868) 148.

Where the tenant for life had only received the dividends and the term ended in her lifetime, she was held entitled to the corpus. *In re Beaufoy*, 1 Sm. & G. 20; and see *Phillips v. Sargent*, 7 Hare 33.

And if a tenant for life has only received the dividends and dies before the term ends, his personal representatives will, no doubt, be entitled to a share of the corpus, calculated on the principle laid down in *Askew v. Woodhead*. See *In re Money's Trusts*, 2 Dr. & Sm. 94.

Where the lease is renewable, so that practically the property is held in perpetuity and it is taken compulsorily, the tenant for life will only be entitled to the dividends and not to the corpus, although his income may be thereby diminished. *In re Wood's Estate*, 10 Eq. 572, and see *Maddy v. Hale*, 3 Ch. D. 327, and *In re Barker's Settled Estates*, 18 Ch. D. 624.

Where the sons of a testator were entitled to hold leasehold premises at a reduced rent as long as they or either or the survivor might carry on business therein, they were held entitled to the value of this interest less a reduction for the possibility of their ceasing to carry on business. *Penny v. Penny*, 5 Eq. 227.

The word "lease," by the definition (section 3, *ante*, p. 5), includes an agreement for a lease, and see *In re King's Leasehold Estates*, 16 Eq. 521.

"Reversion Dependent on any such Lease."—When the purchase money is paid in, in respect of a reversion, the principle of division as between the tenant for life and the remainderman is different.

If a tenant for life is receiving rent as lessor, he is not entitled when the land is taken to any more than such rent unless he outlive the period of the term. It follows, therefore, that if land has been let at less than a rack rent the interest arising from the purchase money will probably exceed the former rent. To this excess the tenant for life is not entitled as it is in fact part of the reversion. The usual order is to direct payment to the tenant for life of the income he had before and order the rest to be accumulated. By this method the full value of the fee will be in Court by the end of the term. *In re Wootton's Estate*, 1 Eq. 569, but see *In re Steward's Estate*, 1 Dr. 636, which has not, however, been followed.

When the date arrives at which the lease would have fallen in, the tenant for life will then be entitled to the full income arising from the

Sect. 74. fund in Court. *In re Wilkes' Estate*, 16 Ch. D. 597. See form of order to this case, p. 602.

The same principle is applied if the lease have been originally granted at a rack rent, but the property has increased in value. *In re Mettles Estate*, 7 Eq. 72; *Cottrell v. Cottrell*, 28 Ch. D. 628.

Where minerals which had been let on lease were devised to a person for life without impeachment for waste, and the lessee gave notice of his intention to work them to a railway company, who required them for support, and whereupon the lessor's interest was assessed and paid into Court, it was held that the money might be paid out to the tenant for life as they were not of such an extent that they could not be got during his life. *In re Barrington; Gamlen v. Lyon*, 33 Ch. D. 523; but cf. *In re Robinson Settlement Trusts* [1891], 3 Ch. 129, under section 69.

Church Lands let on Lease.—The same principle is applied in the case of lands leased by a corporation sole. If they are taken by a railway company, the lessor will only receive the dividends equal to the amount of the rent, and the rest will be accumulated until the date when the lease would have expired, and then the lessor will be entitled to the whole dividends. *Ex parte Dean and Chapter of Gloucester*, 19 L. J. Ch. 400; *Ex parte Dean and Chapter of Christchurch*, 23 L. J. Ch. 140; *Ex parte Archbishop of Canterbury*, 23 L. T. (o.s.) 219.

Where the property is let at a nominal rent the whole income will be accumulated until the lease would have expired. *Ex parte Rector of Lambeth*, 4 R. C. 232; *Ex parte Bishop of Winchester*, 10 Hare. 137.

If leaseholds were according to custom renewable at certain intervals upon payment of fines, the Court on the recurrence of every period at which if the land had not been taken the lease might have been renewed will authorise the payment out of the fund arising from the purchase money and its accumulations, a sum equivalent to such fine (*Ex parte Precentor of St. Paul's*, 1 K. & J. 539), or to the difference in the amount of the fine caused by part of the land being taken. *Ex parte Bishop of Winchester*, 10 Hare. 137. But where renewable leaseholds, being under notice to treat by a company, were not renewed and the company proved abortive but the land was taken by another company, the vendors were held not to be entitled to any part of the money by way of compensation for the fine they omitted to take in consequence of the first notice. *Ex parte Dean of Westminster*, 18 Jur. 1113. In cases of church lands let on lease the Court will probably allow the money paid in respect thereof to be laid out for the benefit of the living or see. *Ex parte Rector of Lambeth*, 4 R. C. 231.

Where the land was available for building purposes and the corporation were in the habit of accepting surrenders of leases and re-granting them at larger rents for building purposes, the Court ordered all the dividends to be paid to the corporation. *Re Dean of Westminster*, 26 Beav. 214.

Where a lessee and a dean and chapter together agreed for a certain sum to sell the land held in lease, and the money was paid into Court, the Court refused to apportion the lessee's share, but by consent ordered the money to be invested and the dividends paid to the lessee until the expiration of the lease, he undertaking to pay the rent reserved by the lease. *Ex parte Ward*, 2 De G. & Sm. 4. An inquiry would now be probably made as to their respective interests, and the fund apportioned accordingly. See section 78, and note "May order distribution," *post*, p. 190.

Where no object would be attained by accumulating, the Court has

ordered the whole dividends to be paid, as, for example, where land which had been let on lease was vested in trustees in trust for the repair of a church. *Ex parte Trustees of St. Thomas's Church Lands, Bristol*, and *Ex parte Trustees of Temple Church Lands, Bristol*, 23 L. T. (N.S.) 135. **Sect. 74.**

Practice.—For procedure under this section, see the notes to section 70, note "Applications for Investments," *ante*, p. 168.

The remainderman ought probably to be served with the summons or made a respondent to a petition under this section, at least if there is any question between him and the tenant for life. See *In re Crane's Estate*, 7 Eq. 322, where the company were ordered to pay the costs occasioned thereby.

75. Upon deposit in the bank in manner hereinbefore provided (a) of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking, under the provisions of this or the special Act or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey (b) such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the under-

Upon deposit being made, the owners of the lands to convey, or in default the lands to vest in the promoters of the undertaking upon a deed poll being executed.

Sect. 75. taking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

(a) See sections 69, 71—73, and section 76.

(b) See section 7. As to conveyances, see sections 81—83.

“By Jury,” &c.—For the different methods of assessment, see section 21, and note “Shall be settled in manner hereinafter provided,” *ante*, p. 52.

The case where the amount of compensation claimed is under 50*l.* is omitted from the list. Section 22, *ante*, p. 55. The case where the interest is that of a yearly tenant is also omitted, but conveyance in such a case would appear to be unnecessary. See section 121, and notes thereto, *post*.

Where parties refuse to convey, or do not show title, or cannot be found, the purchase money to be deposited.

76. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the bank, in the name and with the privity of the Accountant-General of the Court of Chancery (*in England or the Court of Exchequer in Ireland*), (a) to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them

so far as the promoters of the undertaking can do), subject Sect. 76. to the control and disposition of the said Court.

(a) These words have been repealed by the Statute Law Revision Act, 1932.

"If owner . . . fail to make out a title."—The meaning of this part of the section was fully discussed by Lord HATHERLEY, when Vice-Chancellor, in the case of *Douglass v. London and North Western Railway Company*, 3 K. & J. 173. In that case he expressed the opinion that the term "owner" must mean a person having some title, and that the failure to make out a title must arise from an independent estate or interest outstanding in a third party—such as a right of dower, or rentcharge by way of jointure—where such party is under no legal or equitable obligation to concur in the sale, but which does not displace the owner's title. The owner being seised of the lands would be competent to contract, but might fail to make out a title to the satisfaction of the promoters by reason of the outstanding estate or interest. In this particular case it was held that a surviving partner selling partnership lands in discharge of his duty, as survivor in order to wind up the partnership, is an owner within the meaning of the 76th section. But where such partner agrees to show a sixty years' title, and fails to make out more than a thirty-six years' title, the Court cannot compel the company to deposit the purchase money in the bank under this section, but may compel the company to abandon the possession taken under the contract (p. 184).

The above construction was followed with approval by FRY, J. He held that where owners of land agreed to sell land to promoters, but failed to make out any title to a small portion, that the promoters could not acquire the strip by procedure under sections 76 and 77, as they were not in any respect owners of the strip. Specific performance of the agreement was enforced against the promoters as to the rest of the land, as they had proceeded with the contract after knowledge of want of title to the strip. *Wells v. Chelmsford Local Board*, 15 Ch. D. 108.

In an old case under a special Act, it was held that promoters after the price had been agreed or awarded could not at once pay the money into Court and obtain a good title under this section. They must first call upon the owner to make out a good title. *Doe d. Hutchinson v. Manchester, &c., Railway Company*, 15 L. J. Ex. 208.

Costs of proving title. See notes to section 80, *post*.

If the party in possession has shown no title, the proper course would appear to be, if the owner cannot be found, to proceed under section 58 and pay the money into Court under this section. *Re Winder*, 6 Ch. D. 696, p. 705, and see notes to next section. As to the rights of persons in possession, see section 79, *post*, p. 191.

If the ownership is in dispute, section 58 does not apply, and resort should be had to the jury clauses or entry may be made by agreement with the rival claimants and payment of the amount into court. *Ex parte London and South Western Railway Company*, 38 L. J. Ch. 527; *In re Manor of Lowestoft*, 24 Ch. D. 253; and see *Douglass v. London and North Western Railway Company*, 3 K. & J. 173, p. 180.

Sect. 76. “**To deposit in the Bank.**”—As to procedure for lodgment in the bank, see notes to section 69, note “Prescribed by any Act for the time being in force,” *ante*, p. 146, and Supreme Court Fund Rules, 1886, there cited. Section 39 of these rules is only applicable to payments made under section 69, and does not affect payments under this section. Under this section money may be paid in on request, giving a reference to this Act, producing a copy of the special Act and giving a proper description of the land, and stating the reason for payment in. The name of the promoters may be left out of the heading of the account. Cf., section 69.

As to investment, application, and payment out of the fund in Court under this section, see section 78, and for practice generally, see notes to section 70, *ante*, p. 168, *et seq.*

“*Accountant-General.*”—Now the Paymaster-General of the Supreme Court of Judicature, see section 69, same note, *ante*, p. 145.

Upon deposit being made a receipt to be given, and the lands to vest upon a deed poll being executed.

77. Upon any such deposit of money as last aforesaid being made, the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in ; (a) and it shall be lawful for the promoters of the undertaking, if they think fit to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation, under the hand and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein ; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

(a) As to deposit in Court, see Supreme Court Fund Rules, 1886 set out in note to section 69, *ante*, p. 146, *et seq.*

"All the estate in such lands of the Parties . . . shall vest." Sect. 77.

—From the construction put upon the word "owner" in section 76 (see note "If the owner fail to make out a title," *ante*, p. 187), it follows that if the promoters of an undertaking agree to purchase a larger estate or interest from a person than he possesses, there does not vest in them under this section a greater estate than that person can give them. Thus, if a person in possession, but not otherwise having a good title, agrees to sell the fee simple for a certain sum to promoters, and they, not being satisfied with his title, pay the money into Court and execute a deed poll under sections 76 and 77, they will only acquire that person's interest in the land, and the true owner will be at liberty to take proceedings, by ejectment or otherwise, against the promoters. *Re Windsor*, 6 Ch. D. 696; *Wells v. Chelmsford Local Board*, 15 Ch. D. 108.

The promoters must protect themselves by proceeding under the other sections of the Act. Cf., *Gedye v. Commissioners of Works* [1891], 2 Ch. 630, and see notes to section 76.

The promoters cannot be compelled to proceed under sections 76 and 77, and if an action is brought by the landowner for the amount of the compensation awarded it is a good answer that the conveyance has not been executed. *Guardians of East London Union v. Metropolitan Railway Company*, L. R. 4 Ex. 309; *Douglass v. London and North Western Railway Company*, 3 K. & J. 173.

As to enforcing awards generally, see section 36, *ante*, p. 78.

78. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery (in England or the Court of Exchequer in Ireland), (a) may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

Application of moneys so deposited.

(a) These words are repealed by the Statute Law Revision Act, 1892.

"Application by Petition."—The application in most cases will now, under Order 55, r. 2, be by originating summons. See the practice and rules in the notes to section 70, note "Applications for Investment," *ante*, p. 168.

"Of any party making claim to the Money."—An incumbrancer is entitled to apply under this section, and a mortgagee of land taken is entitled to payment out of the amount of his mortgage, and if the

Sect. 78. company who made the deposit take an assignment of the mortgage, the money will be paid out to them. *Re Marriage*, 9 W. R. 843, and see *KINDERSLEY*, V.C., p. 777.

An equitable mortgagee is also entitled to be paid out the principal sum and interest, but if interest has not been paid for several years prior to the land being taken, only six years' arrears of interest will be allowed. *In re Stead's Mortgaged Estates*, 2 Ch. D. 713.

Mortgagees in possession where the debt was in excess of the amount paid in were ordered to be paid all the money in Court, including a sum which the arbitrator certified in respect of loss of profits. *Pile v. Pile*; *Ex parte Lambton*, 3 Ch. D. 36.

As to lands subject to mortgages, see sections 108—114, *post*.

When wrongfully paid in.—When the promoters have wrongfully paid the sum into Court, the person entitled apparently may either obtain the payment of it out of Court or sue the promoters for specific performance of their agreement.

Thus, where lands had been taken by a company who had taken possession after the value had been awarded and the abstract furnished, no objection being taken to it, but did not pay the purchase money, the vendors sued and obtained a decree for the amount to be paid on a certain day. Before the day arrived, the company alleged that the abstract only showed a title to a moiety of the lands and paid the money into Court. It was held that the title had already been found satisfactory under the decree and the money was ordered to be paid out to the vendors. *Galliers v. Metropolitan Railway Company*, 11 Eq. 410.

A lessee of a house which he had mortgaged, who had agreed to sell his leasehold interest in it to promoters for 400*l.*, of which 150*l.* was apportioned to the leasehold and 250*l.* for trade damages and personal expenses, brought an action for specific performance of the agreement. The promoters paid the money into Court and executed a deed poll under sections 76 and 77, but they were ordered to pay 250*l.* to the tenant, the Court holding that the agreement to pay that sum was independent of the title. After paying it they would be entitled to receive that sum out of Court. As to the balance an inquiry was ordered as to what persons were entitled to the purchase money for the leasehold interest. *Cooper v. Metropolitan Board of Works*, 25 Ch. D. 472.

"To be laid out or invested in the public funds."—This money being cash under the control of the Court, it may be invested in any of the securities sanctioned by the Court. *Ex parte St. John Baptist College, Oxford*, 22 Ch. D. 93, and see section 70, note "Until the money can be so applied it may be invested," *ante*, p. 167, for a list of these securities.

"May order Distribution."—If an occupier or owner of land claim a greater interest than that to which he can make title, and the money is paid into Court, there is no provision in the Act for determining his interest, but the Court will use its own machinery and will order an inquiry as to the extent of the claimant's interest and will order an amount equivalent thereto to be paid out to him, and the remainder paid to the company who paid it in. *Brandon v. Brandon*, 34 L. J. Ch. 333; *Ex parte Cooper*, 34 L. J. Ch. 373; *Re Hayne*, 13 W. R. 392.

If there are different claimants of the amount, the Court will order an inquiry as to their respective interests, as, for example, between a mortgagor and a mortgagee. *Cooper v. Metropolitan Board of Works*, 25 Ch. D. 472. **Sect. 78.**

Thus, where a tenant holding under a void lease claimed the value of the lease and damages for expulsion and loss of trade, and the money was paid into Court, the Court allowed the amount found due for the damage and ordered an inquiry as to what portion of the value of the lease should be paid to him for moneys expended in improvements or the faith that the lease was valid. *Ex parte Cooper*, 34 L. J. Ch. 373, and see a similar order in *Re Hayne*, 13 W. R. 392.

Where money had been paid into Court in respect of a foreshore, and the claimants admitted that a small portion thereof did not belong to them, the Court did not order the value of the land possessed by the claimants to be assessed by a jury, but apportioned the amount in court under this section. *Re Alston's Estate*, 5 W. R. 189.

Where money had been paid into Court in respect of freehold and copyhold lands, which a tenant for life had agreed to sell to a railway company, but he was unable to make a good title to parts of the copyhold land, the Court apportioned the sum in Court and ordered an amount representing the land to which a good title was made, to be carried over to a different account, and the dividends paid to the tenant for life. *Re Park's Estate*, 1 Sm. & G. 545.

Where land of an infant has been taken, the infant's mother is entitled to have the value of her dower paid out of the fund, and not merely one-third of the dividends. *In re Hall's Estate*, 9 Eq. 179.

When a claim to the land is made by someone else, the money will not be dealt with till the claim is settled. It may in some cases be settled by serving the other parties claiming; but in the case of a claim by the Crown, the matter cannot be so settled, as the Crown cannot be brought before the Court in this way. *In re Manor of Lowestoft*; *Ex parte Reece*, 24 Ch. D. 253; and cf. *In re St. Pancras Burial Ground*, 3 Eq. 173, where the Court refused to act until a second petition was brought by the Attorney-General. Prior to the Judicature Acts the Court of Chancery directed an issue to be tried in the Common Law Courts when there were rival claimants. *Ex parte Freeman of Sunderland*, 1 Dr. 184. For the provision guiding the Court when a possessory title is shown, see next section.

The Court has jurisdiction to determine questions of title in respect of lands taken, when actions are brought against the promoters in respect thereof. See *Bogg v. Midland Railway Company*, 4 Eq. 545; *Birmingham Land Company v. London and North Western Railway Company*, 40 Ch. D. 268.

Conversion.—Money paid in under section 76 is converted and payable to the personal representatives of the owner. *In re East Lincolnshire Railway Company*; *Ex parte Flammank*, 1 Sim. (N.S.) 260; and under similar provisions in a special Act; *Ex parte Hawkins*, 13 Sim. 569; cf. *Re Harrop*, 3 Dr. 726, p. 733.

Under section 69 the rule is otherwise. See section 69, note "Moneys shall remain so deposited until applied," ante, p. 148; and see *In re Walker's Estate*, 22 L. J. Ch. 888.

79. If any question arise respecting the title to the lands in respect whereof such moneys shall have been so paid or **Party in possession to be**

Sect. 79. deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the Court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

“The Parties respectively in possession of such Lands.”—This section enables the Court to order the money to be paid out to persons who claim as owners, but whose title is merely possessory, and there is no other claimant to the fund.

Thus, the Court will order the money to be paid out to a person who has taken possession of vacant land and been in undisturbed possession for a number of years (29). *Ex parte Webster*, W. N. (1866) 246.

So where a woman had been in possession of land since the death of her husband (eighteen years), and the heirs of her husband consented, and no claim had been made in respect thereof for some ten years previously, and it appeared that if the railway company had not taken it she would have remained in possession for more than twenty years, the Court, under all the circumstances of the case, ordered the fund to be paid to such occupant. *Re Evans*, 42 L. J. Ch. 357.

Where the parties in possession were mortgagees who had been in receipt of the rents and profits for forty-five years, the Court ordered the dividends of the full amount to be paid to them until further order, without prejudice to any question of their liability to any other parties. *Re Cook's Estate*, 8 L. T. (N.S.) 759.

In cases also where a person has been in possession for years and part of his land is taken, the Court has power under this section to pay out the money to him without calling upon him to prove his title, if it be shown that it can be supported. Because a company take part of his land, his title to the whole of it ought not to be jeopardised.

The principle in these cases is that the Court shall not, upon occasion of these applications for payment of purchase money, deal with the property in any way whatever which can affect the title unless it be shown so clearly as to be beyond question that there must be litigation upon the question of title. Per PAGE WOOD, V.C., *In re St. Pancras Burial Ground*, 3 Eq. 173, p. 183.

Thus, where part of the lands of a tenant for life were taken, of which he had been in possession for some years, but there was some doubt as to his title owing to the different constructions which might be put upon an old will under which he claimed, the Court ordered the dividends to be paid to him, being satisfied that the construction according to which he claimed was arguable, and that he was in posses-

nion. In such a case the duty of the company is merely to suggest any doubts as to the title to the Court, but not to argue them. *Re Sterry's Estate*, 3 W. R. 561; S. C. *sub. nom. Re Perry's Estate*, 1 Jur. (N.S.) 917. Sect. 79.

This section is also intended as a direction to the Court as to how it should act in any case in which, upon an application for the money paid in or deposited, it should be unable to arrive at a satisfactory conclusion as to which party was lawfully entitled to the land. Per KIDDERLEY, V.C., *Ex parte Freeman of Sunderland*, 1 Dr. 184, p. 189.

Thus, where petitioners were in possession of a foreshore and had exercised rights of ownership over it for more than twenty years, all of which were consistent with the documentary evidence, they were held to be entitled to the purchase money although no grant from the Crown could be produced. *Re Alston's Estate*, 5 W. R. 189.

As to inquiries as to title, see note to section 78, *ante*, p. 190.

As to possession by trustees of a disused burial ground. *In re St. Pancras Burial Ground*, 3 Eq. 173; *Campbell v. Mayor of Liverpool*, 9 Eq. 579.

"As being the Owners thereof."—In order that this section may apply, the person must either be in possession as owner, or he must be in receipt of the rents as being entitled thereto.

Thus, where land was taken from a lessee shortly before the expiration of a long lease for 300 years, no rent having been paid by the lessee for many years and the reversioner being unknown, the value of the lease was paid to the lessee and the value of the reversion into Court. After twelve years from the date of such payment into Court, the lessee applied for the fund in Court on the ground that he would have acquired by that time a title to the reversion in fee if the land had not been taken. The Court, however, refused the application on the ground that he was not in occupation as an occupier claiming the fee, but as owner of an unexpired term of years. *Gedye v. Commissioners of Works* [1891], 2 Ch. 630.

In this last case the Court of Appeal expressed considerable doubt (pp. 638, 639) of the correctness of a decision by BACON, V.C., in *Ex parte Chamberlain*, 14 Ch. D. 323. In that case a person had been in possession for twenty-six years after the expiration of a term of 192 years of land which was taken by a railway company, and as there was no claim by or evidence of the reversioner, the money was ordered to be paid to the occupier, but it is doubtful if he was in occupation as owner within the meaning of the statute. Cf. *Ex parte Winder*, 6 Ch. D. 686, and *Ex parte Hollingsworth*, 19 W. R. 581, an application in regard to the same fund, and see *In re Forde* (1894), 1 Ir. R. 166.

80. In all cases of moneys deposited in the bank under the provisions of this or the special Act, or an Act incorporated therewith, except where such moneys shall have been deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of

Costs in cases of money deposited.

Sect. 80. Chancery (in *England* or the Court of Exchequer in *Ireland*)(a) to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such moneys in Government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested, and for the payment out of court of the principal of such moneys, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: Provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the Court of Chancery (in *England* or the Court of Exchequer in *Ireland*)(a) that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the Court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

(a) These words have been repealed by the Statute Law Revision Act, 1892.

"In all cases of moneys deposited."—This section is not confined to cases where moneys are deposited in the bank under sections prior to it, but extends to cases where money is deposited under subsequent sections. It thus extends to cases where money is paid in under section 85. *In re London, Brighton, and South Coast Railway Company; Ex parte Flower*, 1 Ch. 599; *Ex parte Morris*, 12 Eq. 418; *Charlton v. Rolleston*, 28 Ch. D. 237.

Where money has been paid into a bank other than the Bank of England by agreement between the parties, this section is not applicable. *Re Eastern Counties Railway Company*, 26 L. T. (o.s.) 176.

This section is not affected by Order 65 of the Rules of the Supreme Court, which makes the costs of and incident to all proceedings in the Supreme Court in the discretion of the court or a judge, as the Rules of

the Supreme Court do not over-rule the provisions of special statutes **Sect. 80.** giving special costs in particular cases. *Reeve v. Gibson* [1891], 1 Q. B. 652, 680; *Hascker v. Wood*, 54 L. J. Q. B. 419.

It had also been held that the above order did not extend the jurisdiction of the Court to give costs under a statute which was silent as to costs, no costs in such a case being given under the old practice in Chancery (*Re Mill's Estate*, 34 Ch. D. 24), but the jurisdiction of the Court has since been extended by the Judicature Act, 1890, s. 5. The express provisions of any statute, it will be seen, remain, however, unaffected by it.

The section is as follows:—

5. "Subject to the Supreme Court of Judicature Acts and the Rules of the Court made thereunder, and to the express provisions of any statute, whether passed before or after the commencement of this Act, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and to what extent such costs are to be paid."

This section was passed to enable the court to give costs in cases where they could not be given in consequence of the decision in *Re Mills*, *supra*, that costs could not be given when the Act was silent. The Court has now jurisdiction to give costs in these cases, and will apparently follow in this respect the decisions under the Lands Clauses Act.

Thus if land were taken by a public body under 57 Geo. 3, c. xxix. (*Michael Angelo Taylor's Act*), and money paid into court, on a petition to get that money out, there being no provision in that Act as to payment of the costs by the public body, the Court had no jurisdiction to order the payment of such Costs. The Court now has jurisdiction to order the public body taking the land to pay the costs of and incidental to such petition, and will do so. *In re Fisher* [1894], 1 Ch. 450.

"Or an Act incorporated therewith."—As to incorporation, see notes to sections 1 and 5.

Since power has been given to the courts to award costs in every case under statutes, subject to the express provisions in the particular statute (Judicature Act, 1890, s. 5, *supra*), the cases as to whether the Lands Clauses Consolidation Act is incorporated or not are of much less importance.

In the case of statutes passed after the Lands Clauses Act, 1845, enabling public bodies to take land, that Act will be incorporated whether expressly mentioned or not, and questions of costs not provided for by the special Act will be decided according to the provisions of the Lands Clauses Act, and this is so whether the Act subsequent to the Lands Clauses Act incorporates part of a previous Act. *Ex parte Vicar of St. Sepulchre's*, 4 D. J. & S. 232; *In re Wood's Estate*, 31 Ch. D. 607; *Ex parte Eton College*, 20 L. J. Ch. 1; *In re Ellison's Trusts*, 8 D. M. & G. 62; *Lancashire and Yorkshire Railway Company v. Evans*, 15 Beav. 322; and see *Mayor of Huddersfield v. Shaw*, 54 J. P. 524; and as to reading the Lands Clauses Act together with the special Act, see *Sharpe v. Metropolitan District Railway Company*, 5 App. Cas. 425.

There has been some difference of opinion as to whether or not the Lands Clauses Act was incorporated in certain subsequent Acts. If not, no costs under section 80 could, of course, be allowed. *In re Cherry's*

Sect. 80. *Estate*, 31 L. J. Ch. 351; *In re Mill's Estate*, 34 Ch. D. 24; *In re Charity Schools of St. Dunstan-in-the-West*, 12 Eq. 537; and cf. *In re Spitalfields Schools*, 10 Eq. 671; *In re Wood*, 31 Ch. D. 607, per ESHER, M.R., p. 618.

The special Act while incorporating the Lands Clauses Act may contain express provisions as to costs, in which case, of course, the costs will be governed by such provisions. See *Re The St. Katherine's Dock Company*, 14 W. R. 978.

Where a charitable body is authorised by a private Act to buy certain land, and there is a provision that the money shall be paid into Court as provided by the Lands Clauses Act, this does not thereby incorporate the above section, and as the charitable body is not a public undertaking, it will not be ordered to pay the costs of applications in respect of the fund in Court. *Re Sion College*, 55 L. T. (N.S.) 589.

"The wilful refusal."—This section is construed strictly against the company, and a wilful refusal must be one made merely capriciously and without any reason. If there has been a fair objection, a party is not to be treated as having wilfully refused, because the reason for his refusal happens afterwards to turn out untenable. *In re Windsor, &c., Railway Act*, 12 Beav. 522; and see the same principle, *Ex parte Brulshaw*, 16 Sim. 174.

Thus a landowner will not be deprived of his costs if he refused to accept the purchase money because he believed the award invalid, and there was a substantial question as to its validity (*Ex parte Bradshaw*, 16 Sim. 174), or because on counsel's opinion there was a question as to the right of the promoters to take his land (*Ex parte Dashwood*, 26 L. J. Ch. 299), or because he believed on substantial grounds that the notice to treat had been improperly served. *Ex parte Railston*, 15 Jur. 1028. And even in a case where the petition omitted to state the ground for refusal, the Court took judicial notice from its own recollection, of the petitioner having instituted a suit to contest the validity of the award, which suit was not frivolous, although unsuccessful and allowed his costs. *Ex parte Lawson*, 17 W. R. 186. It is not a wilful refusal or neglect to convey that the landowner has not paid off his incumbrancers or procured them to join in the conveyance. *Re Divers*, 1 Jur. (N.S.) 995; *Re Nash*, 1 Jur. (N.S.) 1082.

It, however, amounts to a wilful refusal of the purchase money if the promoters tender the amount ascertained by arbitration, and the landowner refuses it unless his costs are also paid to him at the same time, as there are other methods provided for obtaining the costs. The landowner was also ordered to pay the costs incurred by the company in calling in the sheriff to give formal and legal possession. *Re Turner's Estate*, 5 L. T. (N.S.) 524.

"Wilful neglect . . . to make out a good title."—Where a landowner fails to deliver a statement of title within the time prescribed by published statutory notices, he will be regarded as having wilfully neglected to make a good title, and will have to bear his own costs of getting the money out of Court. *In re Corporation of Dublin*; *Ex parte Dowling*, 7 L. R. Ir. 173.

If the landowner refuses to make out a good title to the satisfaction of the promoters by refusing to stamp certain deeds of title, the company will, of course, be ordered to pay the costs, if such stamping is considered by the Court to be unnecessary. *Ex parte Birkbeck Freehold Land Society*, 24 Ch. D. 119.

"To order the costs."—This does not authorise the Court to order the payment of costs out of any particular fund, it merely means that the Court may make an order upon the promoters to pay them. Thus, if money is paid in under section 85, it may be paid out to the promoters upon fulfilling the conditions of the bond, and the Court cannot order payment of costs out of it. There is no lien upon it. *In re South and Brecon Railway Company*, 9 Ch. 263; *Ex parte The Great Northern Railway Company*, 5 R. C. 269. See note to section 85, *post*.

Sect. 80.

The matters in respect of which the Court may order the costs to be paid by the promoters are according to this section as follows:—

- I. The purchase and taking of the lands.
- II. The investment of the moneys in Government or real securities.
- III. The reinvestment in other lands.
- IV. Obtaining the proper orders for the above purposes.
- V. Obtaining orders for payment of dividends.
- VI. Obtaining orders for payment out of the moneys.
- VII. All proceedings relating to the above except such as are occasioned by adverse litigation.

It will be noticed that this section does not enable the Court to order promoters to pay the costs in connection with all the applications of the money allowed by section 69, such as the redemption of the land tax, the discharge of incumbrances and the erection of substituted buildings. In certain of these cases the Court has ordered the costs to be paid by the promoters. See this discussed in note "Re-investment in other lands," *infra*, p. 200.

I. "The Costs of the Purchase or taking of the Lands."—The power given to the Court to order costs under this heading is limited by the other provisions as to costs in the Act. Thus the costs of assessing the amount of compensation to be paid are regulated, if by justices, by section 24; if by arbitrators, by section 34; if by a jury, by section 51; and in the case of persons abroad, by section 67. Sections 82 and 83 contain provisions as to the costs of deducing title and of the conveyance. None of these costs can, therefore, be included in an order under section 80. *Ex parte Great Northern Railway Company*, 5 R. C. 269.

But where lands were taken under a special Act, which enabled the arbitrators to decide as to the costs of arbitration and incorporated sections 69—80 of the Lands Clauses Act, but not section 34, the Court held that it had jurisdiction, upon an application under section 80, to order the promoters to pay costs of the arbitration on the arbitrators having omitted to do so. *In re Pardoe's Account*, W. N. (1882) 33.

Nor can the costs of an action to enforce the Act be included in such an order; such costs should be applied for in the action. *Ex parte Great Northern Railway Company*, 5 R. C. 269; *Haynes v. Barton*, 9 W. R. 777.

Costs have been given under this heading in the case of persons under disability when an application to the Court has been necessary, as it is the rule of the Courts that the estates of such persons are not to be burdened with costs directly or indirectly by reason of their land being taken. Thus promoters taking land belonging to a lunatic will be ordered to pay the costs occasioned by a reference to a Master as to the propriety of the sale, and also the costs of a petition by the committee of

Sect. 80. the lunatic for confirmation of the contract (*In re Taylor*, 1 M. & G. 210), including the costs of the attendance if required before the Master of the heir-at-law (*Re Walker*, 7 R. C. 129), or of the next of kin. *Re Briscoe*, 2 D. J. & S. 249. As to the attendance of the heir and next of kin on enquiries before the Master, see rules 38 and 39 of the Rules in Lunacy, 1890.

In the case of infants, see *In re Manchester and Southport Railway Company*, 19 Beav. 365, and cases, *infra*.

Similarly if the land to be purchased is the subject of an administration suit, the costs of any application in the suit necessary in order to carry out the purchase must be paid by the promoters.

Thus they have been ordered to pay the costs of an application to obtain the direction of the Court as to the course to be taken with reference to the notice to treat (*Haynes v. Barton*, 30 L. J. Ch. 804, 808), and of an application to obtain the subsequent confirmation of the sale (S. C. 1 Eq. 422). In a suit where women and children were interested, the costs of a reference and of the petition in the cause to ascertain what course was most beneficial for the parties under disability was ordered to be paid by the promoters. *Picard v. Mitchell*, 12 Beav. 486, followed in *Henniker v. Chafy*, 28 Beav. 126.

As to the parties to be served in these cases, see note "Service and Appearance," *post*, p. 205.

Land taken under Section 85.—Where land has been taken under section 85, and the money paid into Court, and, as a result of subsequent negotiations, the landowner does not become entitled under the other sections of the Act to the costs he has incurred, the Court will allow them under this section on application to get the money out of Court.

Thus where a company took land subject to leases, and the purchase money of the whole estate, including that for the leases, was ascertained by arbitration but was not paid into Court, inasmuch as the landowner arranged with the various lessees as to the apportionment, the Court ordered the company to pay his costs of obtaining such apportionment on an application for payment out of the sum deposited under section 85. *Ex parte Flower*, 1 Ch. 599.

So where the land had been taken and a jury summoned to assess the amount, but the parties then came to an agreement as to the compensation, the vendor's costs occasioned by the abortive summoning of the jury were ordered to be paid by the promoters on a petition being presented to the Court by the vendor praying for such an order. *Ex parte Morris*, 12 Eq. 418.

In a case where a company had entered under section 85, but were afterwards under a new Act allowed to abandon, subject to the landowner's rights to compensation for damage done by entry and occupation, to be determined according to the Lands Clauses Act, the company were ordered to pay the costs of ascertaining the amount of such compensation and of the preparation of an agreement with the landowner in respect thereof, the Court being of opinion that this was a taking within the meaning of this section and of section 85. *Charlton v. Rolleston*, 28 Ch. D. 237.

II. Of Investment in Government or Real Securities.—This refers to the interim investment provided for in section 70 pending the application of the money according to section 69. As money in Court under section 70 is cash under the control of the Court, and may be invested as such, the costs of investment in securities other than those

mentioned in the section, will be allowed. *Ex parte St. John Baptist College, Oxford*, 22 Ch. D. 93; *Re Brown*, 63 L. T. (N.S.) 131; *Re Harbury's Trusts*, W. N. (1883) 116. Sect. 80.

There was some doubt as to whether an investment on mortgage was an interim or final investment, and the order allowing the same was commonly made on condition that it was to be treated as a permanent investment, and the company was not to be liable for the costs of a future investment. It may now be taken that such an investment is to be treated as an interim and not as a final investment, and no such condition will be required. *In re Blyth's Trusts*, 16 Eq. 468; *In re Sewart's Estate*, 18 Eq. 278; *In re W. Smith's Estate*, 9 Eq. 178; *Reading v. Hamilton*, 5 L. T. (N.S.) 628; to the contrary see *In re Lomas*, 34 Beav. 294; *Re Wilkinson*, 27 L. J. Ch. 384; *In re Flemon's Trust*, 10 Eq. 612.

Where such a condition has been inserted the company will not be liable for the costs of any future application in respect of the purchase-money. *In re Gedding Rectory*, 53 L. T. 244.

Although a contract for the purchase of land as a permanent investment may have been entered into, the costs of an interim investment until the purchase is completed must be paid by the promoters. *In re Liverpool, &c., Railway Company*, 17 Beav. 392.

Under this head are included the broker's commission on the purchase of stock which must be paid by the promoters. *Ex parte Trinity House*, 3 Ha. 95; *Ex parte Braithwaite*, 1 S. & G. App. XV. In such a case the whole of the money ought to be invested without deducting the broker's charges, and the Paymaster-General should be recouped. *Ex parte Braithwaite*, 1 S. & G. App. XV., but see *Ex parte Harborough*, 17 Jur. 1045.

In these cases the official broker must be employed. *In re West Riding and Lancashire Railways Bill*, W. N. (1876) 80.

Interim Re-investment.—If an application be made for a re-investment of the fund other than permanently, the costs of such interim re-investment will be payable by the promoters, if the change of investment is not capricious.

Thus where the committee of a lunatic refused to accept the conversion of the lunatic's consols which represented a fund in Court under this Act, as not being beneficial to the lunatic's estate, and the Crown paid the money into Court, the Court ordered the promoters to pay the costs of the re-investment in preference shares of a railway company, except so far as the costs of investment might have been increased by reason of the redemption money exceeding the amount of the original purchase-money. *Re Brown*, 63 L. T. (N.S.) 131, following as to costs the form of order in *Attorney-General v. Mayor of Rochester*, 16 L. T. (N.S.) 408.

Where the fund has been invested in consols, the Court has ordered the promoters to pay the costs of an investment on mortgage security, without prejudice to the applicant's claim for costs of a subsequent permanent investment in land. *In re Blyth's Trusts*, 16 Eq. 468, a decision of Lord SELBORNE, and see *In re Sewart's Estate*, 18 Eq. 278. In an Irish case the costs were refused of the final application, which was to use the money to pay off incumbrances, not on the ground of want of jurisdiction in respect of incumbrances, but because previous orders for interim investment and payment of dividends had been made. *In re Dublin, &c., Railway Company*; *Ex parte Richards*, 25 L. R. Ir. 175.

Sect. 80. III. Re-investment in other Lands.

Persons absolutely entitled.—Where the fund is in Court, and belongs to several persons who have become absolutely entitled among them to the whole of it, the Court will, nevertheless, order the promoters to pay the costs of a re-investment of the fund in land on the petition of all parties. *Re Jones' Trust Estate*, 39 L. J. Ch. 190; *Re Parker's Estate*, 13 Eq. 495; *Re Dodd's Estate*, 19 W. R. 740.

Where land was taken which was subject to certain uses, and the money paid into Court, but by a will made before the land was taken, but which did not operate until after, the uses were changed, it was held that the promoters must pay the costs of investment of the land to the new uses, although had there been no will the estate would have vested absolutely in the heir. *In re de Beauvoir's Trusts*, 29 L. J. Ch. 567. In that case TURNER, L.J., expressed the opinion that an owner in fee could claim to have a re-investment (p. 570).

Before the Court will allow the money to be invested in land it must be satisfied (1) that it is a fit and proper purchase, and (2) that a good title can be made to it. A provisional contract is usually entered into, and evidence of the fitness of the purchase is produced at the time of application. If the evidence is satisfactory an order for an enquiry into the title will be made, and that, if satisfactory, a conveyance to be settled by the judge may be executed, and the money paid. If the evidence as to the fitness is not sufficient the Court may order an enquiry as to the fitness, and if shown to be fit a further enquiry as to title. See Daniel's "Chancery Practice," p. 1039; Seton on "Decrees," 2019, *et seq.*

As to the duties of a solicitor on the purchase of land under the direction of the Court, see a report of the Taxing Master in *In re Merchant Tailors' Company*, 30 Ch. D. 78, and see Daniel's "Chancery Practice," 1040—1042, on the procedure at the enquiry. *Anon*, 18 Jur. 742.

If trustees of a settlement purchase lands, pay the money and have the conveyances executed, before applying to have the purchase approved as a fit and proper one, they will not be allowed the costs of the purchase, although it may be sanctioned. *Ex parte Bouverie*, 5 R. C. 431; *Ex parte Horfield Trust*, 29 W. R. 462.

If the money is transferred or paid to the petitioner for the purpose of investment in land, the costs of investment are not payable by the promoters. *Ex parte Horfield Trust*, 29 W. R. 462.

If the fund is very small the investigation of the title in whole or in part may be dispensed with (*In re Blomefield's Estate*, W. N. (1876) 242; 25 W. R. 57), and also the reference to the conveyancing counsel. *In re Lapworth Charity*, W. N. (1879) 37.

The promoters are required to pay all the costs of the application, the enquiry, and the conveyance, if the purchase is carried out, but generally they will only be required to pay such costs as are ordinarily payable on an open contract by the purchaser. They will not, therefore, be required to pay the vendor's costs even though the purchaser agree to pay them. *In re Temple Church Lands*, 47 L. J. Ch. 160; *Ex parte Christ's Hospital*, 20 Eq. 605.

If the purchaser employ his own counsel as well as the conveyancing counsel of the Court, he will be allowed costs of consultations between the two counsel on difficult points, but not those of his private counsel for advising on the whole title. *Re Jones's Settled Estates*, 6 W. R. 762.

So also if by reason of changes in the surroundings, funds in Court in

respect of charity lands require to be administered according to a new scheme, the promoters will not be ordered to pay the costs of a new scheme or of the costs incurred by the petition being entitled in *Sir S. Romilly's Act. In re St. Paul's Schools, Finsbury*, 52 L. J. Ch. 454. Sect. 80.

When by reason of the owners of the land taken being trustees of a charity, the conveyance of the land purchased requires to be registered under the Mortmain Acts, the promoters will be required to pay the costs of the enrolment. *Re Governors of Christ's Hospital*, 12 W. R. 869.

If the lands belong to a vicarage, and the attendance of the bishop as well as the vicar is required at the enquiry he will be entitled to his costs of attendance from the promoters. *Ex parte Vicar of Creech St. Michael*, 21 L. J. Ch. 677.

If copyhold lands are purchased the promoters will only be required to pay the fees of admission, but not the fines on admission which are payable out of the fund in Court as part of the purchase money. *Ex parte Vicar of Sarcaston*, 6 W. R. 492; *Re Cann's Estate*, 15 Jur. 3.

Enfranchising copyhold land is equivalent to purchasing freehold, and an inquiry will be ordered as to whether a valid enfranchisement can be made, the costs being payable by the company. *In re Cheshunt Col.* 1 Jur. (N.S.) 995; *Dixon v. Jackson*, 25 L. J. Ch. 588.

If the land to be purchased is the subject of a suit, and a petition in the suit is necessary to enable a conveyance to be made, the promoters will be ordered to pay the costs of that petition (*Carpmael v. Proffitt*, 17 Jur. 875), and the same holds good if after the agreement to purchase the vendor dies intestate, leaving an infant heir, and a second petition is thus rendered necessary, but in such a case they will not have to pay the costs of an action by the purchasers to enforce the contract against the infant heir, these being costs occasioned by adverse litigation. *Armitage v. Ashham*, 1 Jur. (N.S.) 227. Similarly, if the fund in Court is in the hands of trustees, and there is a suit in respect thereof, the trustees must serve the parties thereto, and such additional expenses are payable by the promoters. *Re Brandon's Estate*, 2 Dr. & S. 162.

When purchase not completed.—If the Court does not approve the purchase the promoters will not be ordered to pay the costs, and their costs in such a case have been ordered to be paid out of the fund in court. *In re Hardy's Estate*, 18 Jur. 370, and see *Ex parte Rector of Holynell*, 2 Dr. & S. 463; *Ex parte Stevens*, 13 Jur. 243.

If the Court approve the purchase but it is not completed owing to the vendor being unable to make a good title, the promoters will be ordered to pay the costs (*Ex parte Rector of Holynell*, 2 Dr. & S. 463; *In re Woolley's Estate*, 17 Jur. 850; *Re Carney*, 20 W. R. 407), and also if the proposed purchaser abandon the attempt on reasonable grounds such as the great expense entailed in making a good title (*In re Vaudrey's Trusts*, 3 Giff. 224), but they will not be so ordered if it is abandoned on insufficient grounds. *Ex parte Copley*, 4 Jur. (N.S.) 297.

Fund re-invested in portions.—The fund in Court need not be invested in one purchase of land. It may be invested in several purchases and at different times, and in small sums, provided such investments are not capricious, but are *bona fide*, and for the benefit of the estate, in which case the promoters will be ordered to pay the costs of each application and purchase; otherwise, according to the proviso in the section, the costs of only one application shall be allowed. *Re Brandon's Estate*,

Sect. 80. 2 Dr. & S. 162; *In re Woolley's Estate*, 17 Jur. 850; *Re Trustees of St. Bartholomew's Hospital*, 4 Dr. 425. Wood, V.C., in *Ex parte the Fishmongers' Company*, 1 N. R. 85, said that the authorities established the rule that a case of vexatious and unnecessary expense must be made out against the petitioners to disentitle them to their costs. Cf. *Jones v. Lewis*, 2 Mac. & G. 162; *Ex parte Eton College*, 3 R. C. 271; *Ex parte Waste Land of Bozmoor*, 3 R. C. 513; *Re St. Katherine's Dock Company*, 3 R. C. 514; *Ex parte Bouverie*, 4 R. C. 229; *Re Merchant Taylors Company*, 10 Beav. 485; *Ex parte Hospital of St. Katherine*, 17 Ch. D. 378, all under special Acts. In the last case six different purchases were allowed, the fund being considerable.

Solicitor's Remuneration.—When money in Court is to be laid out in the purchase of land, the solicitor of the party whose land was taken is entitled to charge the scale fee under the Solicitors' Remuneration Act, 1881, "for investigating title and preparing and completing conveyance." The exception in the 11th rule to Sched. I., Part 1 of the General Order under that Act that the scale does not apply "in cases of sales under the Lands Clauses Consolidation Act, or any other private or public Act under which the vendor's charges are paid by the purchaser," does not include a purchase under the Act, and it was held that the solicitor was entitled to have the scale fee, although the purchase was made under the direction of the Court, as he would have to do all the things required in a purchase not in Court, although he did not incur the same responsibility. *In re Merchant Taylors Company*, 30 Ch. D. 28; and see *In re Stewart*, 41 Ch. D. 494.

Fund invested with other money.—If the petitioner invest other money with the fund in Court the company pay all the costs except such as are incurred by reason of the purchase money exceeding the amount of the fund; such extra costs are payable by the petitioner. *Ex parte Hodge*, 10 Sim. 159; *Ex parte King's College, Cambridge*, 5 De G. & S. 621; *Re Branmer's Estate*, 14 Jur. 236; *In re Loveband's Settled Estate*, 30 L. J. Ch. 94; *Attorney-General v. Mayor of Rochester*, 15 W. R. 765; see forms in "Seton," p. 2037.

In one case where the fund in Court was proposed to be invested with another fund in Court arising from the granting of leases, and two purchases of land had been previously entered into, the costs ordered to be paid by the promoters were—(1.) half the costs of the petition, except that those costs were not to exceed the costs of a summons adjourned to the judge in chambers, the amount paid in by them being under 1,000*l.*; (2.) a rateable proportion of the stamp on one conveyance, and (3.) one-fourth of the other costs of reinvestment under both contracts, the fund representing the land taken being about one-ninth of the whole sum to be invested. *Ex parte Curate of Bilston*, 37 W. R. 460.

Where, in a suit in one branch of the Court, it was sought to lay out a considerable sum in the purchase of land, and an application was made in another branch that the money in Court for the purchase of land by a railway company should be applied to make up the sum required, the company were only ordered to pay the costs of the application and not of the conveyance. *Re Bagot's Settled Estates*, 14 W. R. 471.

Where two or more funds in Court paid in by different bodies under the Lands Clauses Act are invested together, see note, *infra*, "Apportionment of costs among several bodies," *post*, p. 214.

Costs of Redeeming Land Tax.—The practice of the Court has been to order the promoters to pay these costs, the Court construing the redemption to be a reinvestment in other lands. JESSEL, M.R., seems to have entertained some doubt as to this, but decided against the company, as being bound by a series of authorities. *In re Bethlehem Hospital*, 19 Eq. 451, following *Ex parte Northwich*, 1 Y. & C. Ex. 166; *Ex parte Trafford*, 2 Y. & C. Ex. 522, on similar provisions in special Acts; *Re London and Brighton Railway Company*, 18 Beav. 608, 611; and *Ex parte Beddoes*, 2 Sim. & Giff. 466, on the Lands Clauses Acts.

If there is any doubt about this point, the Court will now, under section 5 of the Judicature Act, 1894, probably consider they have jurisdiction to give costs. See *supra*, note, "In all cases of moneys deposited," p. 194.

Costs of Discharging Incumbrances.—These costs were not allowed by the courts under this section, there being a current of authorities against them, but the costs of the petition to obtain the sanction of the Court and of the consequent order were allowed. *In re Mark's Trusts*, W. N. (1873) 62; cf. *Dublin, &c., Railway Company*; *Ex parte Richards*, 25 L. R. Ir. 175. The principal authorities are: under the Lands Clauses Act, *Ex parte Corporation of Sheffield*, 21 Beav. 162; *Ex parte Sheffield Town Trustees*, 8 W. R. 602; and under similar provisions in other Acts, *Ex parte Hardwicke*, 17 L. J. Ch. 422; *In re Yeates*, 12 Jur. 279; *In re Stanley of Alderley's Estate*, 14 Eq. 227.

These costs may, possibly, be allowed now under section 5 of the Judicature Act, 1894, as judges have expressed their regret at being unable to allow them, and this Act probably gives them jurisdiction. See note, *supra*, p. 194.

Purchasing lease by reversioner.—The purchase of an outstanding lease by the reversioner, under the Episcopal and Capitular Estates Act (14 & 15 Vict. c. 104), was regarded as an investment in land and not the discharge of an incumbrance, and the promoters were ordered to pay the costs of the purchase. *Ex parte Bishop of London*, 1 D. F. & J. 14; *Ex parte Dean of Manchester*, 28 L. T. (N.S.) 184. The principle would appear to be the same as regards other leases, but cf. *Ex parte Corporation of Sheffield*, 21 Beav. 162, and *Ex parte Corporation of London*, 5 Eq. 418. The promoters will be ordered to pay the costs of the petition. S. C.

Costs of Investment in Buildings.—The Court will sanction the laying out of the money in permanent buildings on the ground that this is an investment in land. See section 69, note, p. 152.

The fees payable to the architect and surveyor for planning and superintending the buildings are not payable by the promoters, as they are expenses of building. *Re The Butchers Company*, 53 L. T. (N.S.) 491.

The money in such cases is usually paid out to be applied in building, or it is paid out on a surveyor's certificate that the buildings are complete. In such cases the costs of the petition are ordered to be paid by the promoters, as it is either a payment out of court, or a reinvestment in land under section 10. *Re Incumbent of Whitfield*, 1 J. & H. 610, which has been followed in *Re Lathropp's Charity*, 1 Eq. 467; *Ex parte Rector of Claypole*, 16 Eq. 574; *Ex parte Rector of Shipton*, 19 W. R. 549; *Ex parte Rector of Gawston*, 1 Ch. D. 477. Two earlier cases to the contrary: *Ex parte Milward*, 27 Beav. 571, and *Re Bucks*

Sect. 80. *Railway Company*, 14 Jur. 1065, may be regarded as overruled; see *Re Lathropp's Charity*, *supra*.

These costs will include the costs of an affidavit as to the advantage to be gained by the buildings, but will not include those of the surveyor's certificate that the works have been completed (*Ex parte Rector of Shipton*, 19 W. R. 549), but will include the costs of a certificate of the amount due. *Re Arden*, 70 L. T. 506.

In that last case the architect's fees and the charges incurred in relation to the contract were ordered to be paid out of the fund; the promoters appealed, as they feared that under the usual order these fees would be payable by them, a fear which LINDLEY, L.J., considered not to be well founded (p. 508).

Of erecting Buildings in Substitution.—The erection of buildings in substitution for those injured by the execution of the works is an application of the money specially provided for by section 69, and as section 80 provides that the promoters shall pay the costs which have been incurred in consequence of the taking of the lands, the costs of the petition for sanctioning the erecting or removing of buildings injured by the proximity of the works are payable by the promoters, but not the costs of the removing, replacing, or rebuilding. *Ex parte Dean of Canterbury*, 10 W. R. 505; *Ex parte Thorner's Charity*, 12 L. T. (o.s.) 266; *Ex parte St. John's, Fulham*, 28 L. T. (o.s.) 173.

Where a hospital had been taken and the application was to pay money to the trustees to be laid out in providing temporary accommodation for the patients, the company were ordered to pay the costs of the petition. *In re St. Thomas's Hospital*, 9 W. R. 1018.

IV. Obtaining the Proper Orders.—The costs of obtaining the orders for redeeming land tax, discharging incumbrances, and investment in buildings, are all payable by the promoters. See note immediately preceding.

It is a general rule of the Court that the promoters will only be called upon to pay the costs necessarily incurred; if, therefore, persons are served or, being served, appear unnecessarily, their costs will not be payable by the promoters. See cases, *infra*, note, "Service and Appearance."

Similarly, if the proper procedure is by summons, the extra costs of a petition will not be allowed. *In re Joliffe's Estate*, 9 Eq. 668; *Re Bethlehem Hospital*, 30 Ch. D. 541; *Bates v. Moore*, 38 Ch. D. 381; *Attorney-General v. St. John's Hospital* (1893), 3 Ch. 151, p. 168; and see cases in notes to section 70. But they will be allowed if by reason of the matter being complicated a petition is necessary. *In re Jackson*, W. N. (1894) 50; *Re St. Alban's, Wood Street*, 66 L. T. (n.s.) 51. Or if a supplementary petition is necessary. *In re Sanders*, 70 L. T. 755.

If only one application is necessary, the costs of more than one will be disallowed. Thus, if moneys belonging to the same trust are paid into Court by different companies, and are dealt with by orders in different branches of the Court, and it is sought to obtain investment or payment out, only one application should be made. *Ex parte Lord Broke*, 11 W. R. 505; *In re Pattison's Estates*, 4 Ch. D. 207; *In re Gore-Langton's Estates*, 10 Ch. 328; *In re Midland Great Western Railway Company*, 9 L. R. Ir. 16; and see section 70, note, p. 171.

Where there are several persons entitled to a fund in Court, each person is entitled to make a separate application in respect of his share, and he is not bound to employ the same solicitor as the other appli-

ants; but if the parties do employ the same solicitor he ought not to incur additional costs by making two or more applications where one would be sufficient, and if he does so, he will not be allowed more than one set of costs. *In re Nicholls' Trust Estates*, 35 L. J. Ch. 516; *In re Long's Trusts*, 33 L. J. Ch. 620; *Ex parte Baroness Braye*, 11 W. R. 333; *In re Spooner's Estate*, 1 K. & J. 220. Sect. 80.

Form of Order as to costs.—Forms of orders for payment and taxation of costs under this section will be found in Seton on "Decrees," 5th edit, p. 2036. The orders must follow the words of the section. Thus where a lease is taken, and under the order it is necessary to sell part of the corpus every six months, no special form of order is required to enable the Master to tax the costs of these half-yearly sales. *In re Edmunds*, 35 L. J. Ch. 538.

It is not usual to insert the exception as to costs of adverse litigation unless some such litigation is supposed to have taken place, see Seton, p. 2037, but cf. *Re Cant*, 1 D. F. & J. 159; *Re Courts of Justice Commissioners*, W. N. (1868) 124.

In simple cases where the costs of the adverse litigation can be distinguished, the order may specify the particular costs which the promoters are not required to pay. *In re Longworth's Estate*, 1 K. & J. 1.

As to what may be included under the usual order, see *Re Arder*, 70 L. T. 506.

Service and Appearance.—It is provided by Order 65, r. 27 (19) and (23), of the Rules of the Supreme Court, as follows:—

(19.) Where any petition in a cause or matter assigned to the Chancery Division is served, and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be 1*l.* 10*s.* The party making such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or judge shall consider the party entitled, notwithstanding such notice or tender, to appear in Court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition, without appearing thereon, he is to be allowed a fee not exceeding the amount aforesaid.

(23.) Where any party appears upon any application or proceeding in Court or at chambers, in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance unless the court or judge shall expressly direct such costs to be allowed.

Notwithstanding the second of these rules, it seems to be the practice that where a petitioner does not, on serving the petition upon a respondent who has no interest in the matter, tender him a sum sufficient to consult a solicitor as to the petition, the petitioner must pay the costs of the

Sect. 80. respondent's appearing. *Wood v. Boucher*, 6 Ch. 77; *Clark v. Simpson*, 6 Eq. 336; and see *Crawshaw v. Thornton*, 2 My. & Cr. 124; *In re Burnett's Estate*, 10 Jur. (N.S.) 289; *Somes v. Martin*, W. N. (1882), 113.

If a sum is tendered as prescribed in rule 19, the Court will consider whether the person served should have appeared or not, and if he ought not to have appeared, he will not receive his costs of appearance. If his appearance is justified, he will have his costs. *In re Duggan's Trusts*, 8 Eq. 697.

The promoters of the undertaking will only be required to pay such costs of service and of appearance as are properly incurred, so that petitioners should protect themselves by tendering 30s. under the above rule. If the party wrongfully appear, he will not receive his costs of appearance, while, if he was properly served, the promoters will be ordered to pay the costs of service and the amount tendered. If, on the other hand, his appearance was justified, the promoters will be ordered to pay all his costs. *In re Gore-Langton's Estates*, 10 Ch. 328, 333; *In re Duggan's Trusts*, 8 Eq. 697.

As an affidavit of service may be necessary, the costs thereof will be allowed against the promoters. *In re Halstead United Charities*, 20 Eq. 48; *Ex parte Jones*, 14 Ch. D. 624.

If, by oversight or for any other reason, a fund in Court has not been dealt with for over fifteen years, and amounts to 500*l.*, no application can be made in respect thereof, without serving the official solicitor with the petition or summons. Chancery Funds Amended Orders, 1874, r. 14, and Supreme Court Fund Rules, 1886, r. 101. In such a case, as the fault lies with the person entitled, the promoters are not required to pay the costs occasioned by such service. *In re J. Clarke's Estate*, 21 Ch. D. 776.

It is proposed to set out the decisions as to service and appearance on applications for the various orders under this section.

Generally it will be seen that all persons who have an interest in the fund which may be affected ought to be served, but that they ought not to appear merely to consent or if their rights are not in fact affected, and where several are served, those with similar interests should as far as possible appear by the same counsel, in cases where there appearance is necessary.

(1.) *Service on applications as to purchase of lands.*—Where applications are necessary because a suit is pending (see note I., *supra*), the parties to the suit must be served, and the costs of their appearance, as well as of the service, are payable by the company. *Haynes v. Barton*, 1 Eq. 422, and 1 Dr. & Sm. 483; *Picard v. Mitchell*, 12 Beav. 486; cf. cases under note "Service where money is to be laid out in the purchase of land."

On a sale of a lunatic's estate the costs of the attendance of the heir, and next of kin at the enquiry before the Master, if required, will be allowed. *Re Walker*, 7 R. C. 129; *Re Briscoe*, 2 D. J. & S. 249.

(2.) *Service on applications for interim investment.*—Neither the trustee or remainderman should be served in such cases if the investment is an ordinary one. If the security is an unusual one, the remainderman should be served, but in such a case the company will not have to pay the costs of the service, or of his appearance. *In re Dowling's Trusts*, 45 L. J. Ch. 568; and see *In re Leigh's Estate*, 6 Ch. 887.

Where land was taken which was held by a lessee for a lease of 99 years, if he should so long live, on an application for *interim* investment, costs were allowed to the trustees and lessee, the trustees being in fact

the tenants of the immediate freeholds, but no costs were allowed to the Sect. 80.
 remaindermen. *Re Finch's Estate*, 14 W. R. 472.

If the tenant for life is in possession, mortgagees and other incumbrancers should not be served, if the application is merely for interim investment and payment of dividends, and the company will not be ordered to pay the costs of such service. *Re Morris's Estates*, 20 Eq. 470; *Re Webster's Estates*, 2 Sm. & G. App. VI.; *In re Lancashire and Yorkshire Railway Company, Ex parte Smith*, 6 R. C. 150; *Re Thomas Trusts*, 12 W. R. 546; and see *In re Hungerford's Trusts*, 3 K. & J. 455. *Re Brooke*, 10 W. R. 35, may be considered overruled, and see *In re Smith*, 14 W. R. 218. Neither need an annuitant be served. *Ex parte Cofield*, 11 Jur. 1071.

Mortgagees in possession should be served (*Re Hungerford's Trusts*, 3 K. & J. 455), and the service and appearance, if necessary, will be payable by the promoters. *In re Nash*, 25 L. J. Ch. 20. Tender under rule 19, *supra*, should be made, for, if their interest is not affected, their costs of appearance will not be allowed.

Under the old practice, when the land taken was vested in trustees, the costs of their appearance have been allowed. *In re Duke of Cleveland's Estate*, 9 W. R. 882; but cf., *Re Finch's Estate*, 14 W. R. 472. Probably, now they should be served, and costs tendered under rule 19, as the costs of their appearance will not be allowed if their interest is not affected.

Where the consent of Church Estates Commissioners was required to an investment, it was held that the consent should have been obtained in writing and that service upon them was unnecessary. *Ex parte Bishop of London*, 2 D. F. & J. 14. So, on an application for payment of dividends to a wife, the husband should join in the petition, and should not be served. No costs of service or appearance will be allowed to him. *In re Osborne's Estate*, W. N. (1878), 179.

In such applications the company is usually made a respondent and served in the usual way; the company may be made a co-petitioner, but this is not the best course. *In re King Edward VI's Almshouses, Saffron Walden*, 37 L. J. Ch. 664.

In some cases it has been held that the company need not be served. *Ex parte Hordern*, 2 De G. & S. 263; *Ex parte Rector of Kirkby Overblow*, 10 L. J. Ch. 329, but query as to the effect of an order against them for costs.

When the company is served, one tender is sufficient, and it is not necessary to make tenders to the secretary or to the solicitor. See *In re Mitchell*, 17 Ch. D. 517.

As to service on promoters, see section 134, *post*.

(3.) *Service where money is to be laid out in the purchase of land.*—When the money is to be re-invested in the purchase of land, the vendor of that land should not be served. If he is served, he will be entitled to his costs from the petitioner, but not from the promoters. *In re Dylar's Estate*, 1 Jur. (N.S.) 975.

If by reason of the lands being settled under a private Act, the trustees and remainderman required to be served on an application by the tenant for life, the promoters will not be called upon to pay these costs. *Re Bowes*, 10 Jur. (N.S.) 817.

Where the land taken is in possession of a tenant for life, and the money is to be laid out in other land, the remaindermen need not be

Sect. 80. served, nor apparently the trustees of the settlement, provided the investment is an ordinary one. *Re Browne and Oxford and Buckinghamshire Railway Acts*, 6 R. C. 733; S. C. *sub nom.*, *Ex parte Staples*, 1 D. M. & G. 624; and see *In re Gore Langton's Estate*, 10 Ch. in judgment of MALINS, V.C., p. 331, note. If money paid for freehold land is to be invested in copyhold land, it would appear doubtful whether the remaindermen ought to be served or not. *Re Browne, supra*, and *In re Cann's Estate*, 21 L. J. Ch. 376.

If the money is paid into Court in respect of land which is the subject of an administration action, the parties to the suit ought to be served, but they ought not to appear and the promoters will not be ordered to pay their costs of appearance. They may, however, be payable out of the fund. *Wilson v. Foster*, 28 L. J. Ch. 410. In some cases costs of appearance have been allowed. *Haynes v. Barton*, 30 L. J. Ch. 804; *Brandon v. Brandon*, 32 L. J. Ch. 20; *In re Brandon's Estate*, 2 Dr. & S. 162.

They will probably be allowed only when appearance is necessary.

As regards incumbrancers the rule as to service and appearance was laid down by the Court of Appeal, in *In re Gore Langton's Estate*, 10 Ch. 328: "That wherever there is a petition simply for the re-investment of money in land, and there are mortgagees or annuitants whose rights are not otherwise affected by the petition, the proper course will be to serve such mortgagees or annuitants with a copy of the petition, and to pay them 40s. (now 30s.) for costs, giving them at the same time an intimation that, if they appear upon the hearing, they will probably have to pay their own costs."

This rule will probably apply to incumbrances created since the payment into Court. *Re Olive's Estate*, 44 Ch. D. 316, and note, *infra*, "Costs due to subsequent dealing with property," p. 212.

(4.) *To discharge incumbrances and for improvements.*—In cases where the money is to be laid out in improvements or in discharging incumbrances, the remaindermen should be served, and costs of their appearance may be allowed against the promoters. Thus, if it is proposed to apply the fund to improvements under the Settled Land Act, the trustees and remaindermen should be served and have an opportunity of objecting. *In re Leigh's Estate*, 6 Ch. 887. So also should the patrons of a living. *Ex parte Vicar of Castle Bytham* (1895), 1 Ch. 348. The costs of the appearance of the remaindermen were allowed in an application for applying to discharge an incumbrance, although it does not appear that they objected to the discharge. *Re Furness Railway Company; Re Romney*, 3 N. R. 287. In Ireland, it has been held, that in applications for the discharge of incumbrances the remaindermen need not be served. *Ex parte Lord Leconfield*, 1 R. 8 Eq. 559; *Ex parte Studdert*, 6 Ir. Ch. R. 53; but cf. *Ex parte Vicar of Castle Bytham, supra*.

Where the money is to be paid out for the purpose of being laid out in buildings, promoters will not be ordered to pay the cost of serving, or of appearance of other parties who are advancing money towards the building, such as the Governors of Queen Anne's Bounty. Their costs will be payable by the petitioner. *Re Incumbent of Whitfield*, 1 J. & H. 610.

(5.) *Service upon Applications for Payment out.*—On these applications the parties interested in the fund should be served, but they ought not to appear unless their interest is affected.

Thus incumbrancers should be served, and 30s. tendered to them under rule 19, *supra*, p. 205; but costs of their appearance will not be allowed if they appear merely to concur (*In re Halstead United Charities*, 20 Eq. 48), following the rule laid down in *In re Gore Langton's Estates*, 10 Ch. 328, *supra*), or if it is to be paid out to them in discharge of their debt. *In re Artizans Dwellings Act*; *Ex parte Jones*, 14 Ch. D. 624. The same principle applies in the case of an incumbrance made subsequently to payment. *In re Olive's Estate*, 44 Ch. D. 316; and see, *infra*, note "Costs due to subsequent dealing with property," p. 212. In one case, where part of the property taken was subject, together with other property affording by itself ample security to two small rentcharges, it was held that service on the persons entitled thereto was unnecessary. *Ex parte Mercer's Company*, 10 Ch. D. 481.

The earlier decisions as to serving incumbrancers were somewhat conflicting. See *Re Hatfield's Estate*, 32 Beav. 252; *Re Brooke*, 12 W. R. 133; *Re Estates of Baroness Braye*, 32 L. J. Ch. 432.

Where a sole trustee applied to have the money paid out to him for division among the *cestuique* trust, and the *cestuique* trust joined in the petition and appeared by counsel representing different classes of interests, such appearance was considered necessary in order to enable the Court to distribute the fund, and all costs of appearance not wantonly incurred were ordered to be paid by the promoters. *In re Long*, 10 Jur. (n.s.) 417; and see *Ex parte Baroness Braye*, 11 W. R. 333.

Where the fund was in the name of trustees to whom the dividends had been paid, they were held entitled to appear, and to their costs of appearance when the persons becoming absolutely entitled applied for payment out. *Re Burnell's Estate*, 12 W. R. 568; *Ex parte Metropolitan Railway Company*, 16 W. R. 996. But if they merely appear to concur, the costs of their appearance under the present practice would probably not be allowed.

When trustees apply for payment out as persons entitled to sell, the *cestuique* trust apparently need not be served. *Re East*, 2 W. R. 111; *In re Gooch's Estate*, 3 Ch. D. 742; *In re Hobson's Trusts*, 7 Ch. D. 708; cf. *In re Smith*, 40 Ch. D. 386.

A person entitled to a share of a fund in Court may apply for the same to be paid out to him without serving the other parties interested, provided at least that there is no question as to the manner in which the share is to be distributed. *Re Midland Railway Company*, 11 Jur. 1095; *Re Clarke's Devises*, 6 W. R. 812.

If the parties employ the same solicitor they ought to join in the same petition, unless their interests are hostile. *In re Nicholl's Trust Estates*, 35 L. J. Ch. 516.

Parties whose names are included in the title to an account should be served, but if they have ceased to have any interest they ought not to appear. *In re Justices of Coventry*, 19 Beav. 158.

(6.) *Service on Application to Transfer Fund.*—(a) *Transfer to Official Trustees of Charitable Funds.*—When funds have been paid into Court in respect of various charity lands, and a scheme is made pursuant to statute, and thereby the various corporations and persons in whose names the funds are respectively standing become bound by such scheme, service on these various corporations and persons is unnecessary on an application for the transfer of the funds to the account of the official trustees. *Re the Rector of Albans, Wood Street*, 66 L. T.

Sect. 80. (N.B.) 51, following *Re Prebendary of St. Margaret's, Leicester*, 10 L. T. (N.B.) 221.

(b) *Transfer to credit of an action.*—If the money is to be transferred to the account of an administration action, the petition ought not to be served on all the parties to the suit, but they ought to join in the petition, unless there are special reasons why they should not, the costs of the petitioner and of the trustees of the will under which the land was devised only were allowed against the promoters in such a case. *Melling v. Bird*, 22 L. J. Ch. 599; *Re Picton's Estate*, W. R. 237. It would appear to be sufficient on such applications that the plaintiff alone should appear. *Eden v. Thompson*, 1 H. & M. 6. The trustee of the estate, if defendant, is probably a necessary party to the application, and has been allowed his costs of appearance (*In re English's Settlement*, 39 Ch. D. 556), and if it is necessary to serve the other parties, their costs will be allowed (*Dinning v. Henderson*, 2 De G. & Sm. 485), and if their appearance is necessary these costs also will be allowed. *Henniker v. Chafy*, 28 Beav. 621. It would probably be advisable to serve the parties and object to their appearance under rule 19, *supra*, p. 205, as the above decisions are somewhat conflicting as to whether it is necessary that the parties should appear or not, and the general principle laid down in *In re Gore Langton's Estate*, 10 Ch. 328, *supra*, will probably be followed.

If the fund is transferred to the credit of an action, and the names of the promoters and of the special Act and Lands Clauses Act are omitted from the title of the account, the promoters will cease to have any liability in respect of costs, and if they are served and appear they will be entitled to their costs as against the petitioner. *Fisher v. Fisher*, 17 Eq. 341; *Prescott v. Wood*, 37 L. J. Ch. 691; *Nock v. Nock*, W. N. (1879), 125. In *Brown v. Fenwick*, 35 L. J. Ch. 241, the money had been paid in to the credit of an administration action, but with a direction that it was not to be paid out without notice to the company who paid it in; by a mistake the account was not entitled in the matter of the special Act. It was held that there was no jurisdiction to order the company to pay the costs of an application for re-investment, but they were left to pay their own costs. In that case it does not appear whether the account was entitled in the name of the company or not; but in a later case it has been held that the Court has jurisdiction to order the promoters to pay the costs after a transfer if the account is entitled, *ex parte* the promoters, although it is not entitled in the matter of the Lands Clauses Act, or the special Act. *Drake v. Greaves*, 33 Ch. D. 609.

V. Costs of obtaining Orders for Payment of Dividends.—Under these costs are included the costs of preparing a power of attorney to enable bankers to receive the dividends, and if the order is to pay to an incumbent of a parish for the time being, the promoters will be held liable to pay the costs of identification and of a fresh power of attorney when a new incumbent is appointed. *Ex parte Incumbent of Guilden Sutton*, 8 D. M. & G. 380. The costs incurred in obtaining the dividends on each several occasion when they became due have been ordered to be paid by the promoters. *Ex parte The Ecclesiastical Commissioners*, 39 L. J. Ch. 623. In two earlier cases under similar provisions in special Acts, the Court held the proper construction of this proviso as to costs to be that the company was bound to pay only the costs of the order for payment of dividends and not the costs of the payment of the

dividends. *Ex parte Athorpe*, 3 Y. & C. Ex. 396; *Mitchell v. Newell*, Sect. 80. 3 R. C. 515.

When dividends are payable to trustees, the order should be so drawn as to enable them to be paid to any new trustees that may be appointed without a further application to the Court. See section 70, note "Forms of Order," *ante*, p. 176. If the order is not so drawn, it would appear to be doubtful if the promoters will be ordered to pay the costs of an application by the new trustees. The Court refused to order them to pay the costs in *In re Pryor's Settlement*, 35 L. T. (N.S.) 202; *Re Audenshaw's School*, 1 N. R. 255; and cf. *Ex parte Hodern*, 2 De G. & S. 263, but ordered them to pay such costs in *Re God's Estate*, 3 W. R. 119; *Re Bassett's Trustees*, 16 L. T. (O.S.) 279; *In re Metropolitan Railway Company v. Mairs*, W. N. (1876), 245. Where the dividends were payable to two persons as joint committees of a lunatic and one died, the promoters were ordered to pay the costs of the application to pay the dividends to the other solely, but the Court ordered the future dividends to be carried to the credit of the matter of the lunacy so that in case of future applications it would not be necessary to serve the promoters. *In re Ryder*, 37 Ch. D. 595.

As to costs of a second application made necessary by reason of subsequent dealings, see heading "VII.," *infra*.

VI. Costs of obtaining Orders for the payment out of the Principal.—These costs are specially provided by section 80, and will be ordered on an application for payment out. *In re Gooch's Estate*, 3 Ch. D. 742. Under several special Acts, such costs have been refused in the absence of special provision (see, for example, *Ex parte Earl of Hardwick*, 17 L. J. Ch. 422; *Re Bristol and Exeter Railway Company*, 11 Jur. 686), but if the Lands Clauses Act is incorporated, costs will be awarded. *Re Ellison*, 25 L. J. Ch. 379.

In the case of persons absolutely entitled, part may be paid out and part invested, and the costs of such an application are allowed. *Re Jones's Estate*, 39 L. J. Ch. 190.

These costs will include the costs of a disentailing assurance if required (*Re devisees of Brooking v. South Devon Railway Company*, 2 Giff. 31; cf. *Ex parte Allen*, 7 L. R. Ir. 124), and of investigating the title of the person claiming, but not the costs of affidavits in answer to claims set up. *In re Spooner's Estate*, 1 K. & J. 220; *In re Singleton's Estate*, 9 Jur. (N.S.) 941.

If the land taken is a lease and part of the corpus requires to be sold every six months, the promoters will be required to pay the costs of such sale. *Re Long's Estate*, 1 W. R. 226; *In re Edmunds*, 35 L. J. Ch. 538.

If by reason of the parties living in Jersey a power of attorney is necessary to enable them to receive the money, the promoters will be ordered to pay the costs of preparing and verifying the execution of the power. *In re Godley*, 10 Ir. Eq. 222.

Where the money is paid into Court in respect of a leasehold and the landlord has a right of re-entry if the rent is unpaid and part is in arrear and notice is given to him by the promoters, in consequence of which he attends the hearing of the application, he will be entitled to his costs although his claim be settled by the lessee. *Re London Street, Greenwich, &c., Act*, 57 L. T. (N.S.) 673.

Where there have been two unsuccessful applications for payment

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Where the money has been paid into Court by reason of the vendors not being able to make a good title owing to their being no administrator to certain parties who had died having vested interests, and in order to get the money out, such administrators became necessary, the promoters were ordered to pay the costs of the several letters of administration, as, had it not been for the land being taken, no such proceeding would have been necessary. *In re Dublin Junction Railways; Ex parte Kelly*, 31 L. R. Ir. 137; *Ex parte Rorke*; *In re Midland Great Western Railway Company* (1894), 1 Ir. R. 146.

The costs of unsuccessful applications for payment out, including the costs of the promoters, may be ordered to be paid by the petitioner. *In re Smith*, 40 Ch. D. 386.

Transfer to another Account.—The transfer of the fund in Court to another account from which the name of the promoters is omitted, is equivalent to a payment out. It is a payment out of Court from one fund to pay it in to another fund; the promoters will, therefore, be ordered to pay all costs properly incurred in connection with the application for transfer. *Melling v. Bird*, 27 L. J. Ch. 599; *Re Bristol Free Grammar School*, 47 L. J. Ch. 317; *Re the Rector of St. Albans, Wood Street*, 66 L. T. (N.S.) 51; *Attorney-General v. St. John's Hospital, Bath* [1893], 3 Ch. 151.

VII. Of all proceedings relating thereto.—Where remaindermen objected to the application of moneys in rebuilding, and the petition was heard a second time at their instance, and appealed, the appeal being in part successful, the promoters were only ordered to pay the costs of one hearing in the Court below; the costs of the petitioner, the remaindermen and the trustees were ordered to be paid out of the fund. *In re Leigh's Estate*, 6 Ch. 887.

Costs due to subsequent dealing with property.—There is some conflict of decisions as to whether the promoters are liable for the costs of applications necessary by reason of the owner of the property in Court dealing with it after it has been paid in, either by re-settling it or mortgaging it. The latest authorities are in favour of making the promoters liable for the costs of such applications rendered necessary by any reasonable dealing with the property.

In the case of *In re Brooshoof's Settlement*, 42 Ch. D. 250, 253, KAY, J., expressed the opinion that the company must take the land subject to the possibility that in ordinary events the owner may deal with it, or the proceeds of it by way of settlement or mortgage, and if that increases the cost of payment out or of any order of the Court concerning the money, the company must pay the increased costs. In this case the tenant for life had, under power in a settlement, appointed the purchase money, and on the application for payment out by the appointees, it had been necessary to serve the trustees of the settlement. Such extra costs were ordered to be paid by the company, KAY, J., following the case of *Re Lye's Estate*, 13 L. T. (N.S.) 664, and see per Lord HATHERLEY, *Eden v. Thompson*, 2 H. & M. 6, p. 9, to the contrary. *In re Byrom*, 5 Jur. (N.S.) 361.

Where by a will made before the land was taken the uses, subject to which it was held were afterwards changed, the promoters were held liable to pay the costs of the investment of the land to the new uses. *In re De Beauvoir's Trusts*, 29 L. J. Ch. 567.

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Where a person on becoming absolutely entitled re-settled the property and applied to have the dividends paid to himself, the Court refused to order the company to pay his costs. *In re Pick's Settlement*, 31 L. J. Ch. 495. In the case of *In re Shakespeare Walk School*, 12 Ch. D. 178, HALL, V.C., expressed the opinion that it would be unreasonable to order the company to pay the costs of an order occasioned by a tenant for life, who had obtained an order for payment to him of the dividends, and subsequently assigned his interest; but considered that where trustees of a charity were receiving the dividends under an order, and by a new scheme rendered necessary by the object of the charity failing, new trustees were appointed, the company should pay the costs of the order for payment to the new trustees.

But the costs of the settlement of a new scheme and of the preparation and execution of a deed to carry it into effect were not ordered to be paid by the promoters. *Re St. Paul's Schools, Finsbury*, 48 L. T. (N.S.) 412.

Where the owner, a reversioner, had mortgaged his reversion, and on the death of the tenant for life, petitioned for payment out, NORTH, J., ordered the promoters to pay the costs of serving the mortgagee and the costs of his appearance, limited as to the latter to 42s. *In re Olive's Estate*, 44 Ch. D. 316, following the dicta of PAGE WOOD, V.C., in *Eden v. Thompson*, 2 H. & M. 6, and of KAY, J., in *In re Brooschoff's Settlement*, 43 Ch. D. 250, cited above, and dissenting from *In re Gough's Trusts*, 24 Ch. D. 569, and not following *Re Jones's Trust Estate*, 18 W. R. 212, and see *Ex parte Peyton*, 4 W. R. 380.

"By litigation between Adverse Claimants."—Where there are adverse claims to the land, and the money is paid into Court at the request of one of the parties, and after the question is settled an application (although without litigation) is made for payment out, the promoters will not be liable to pay any costs. *Re English*, 13 W. R. 302.

But if the promoters, knowing that there is a dispute as to the title, pay the money in under section 76, executing a deed poll, they will be required to pay the general costs of the application for payment out although not those of the parties claiming adversely, apparently, even if such parties are in part successful nor of any costs occasioned thereby. *Ex parte Cooper*, *Re North London Railway Company*, 13 W. R. 364; *Ex parte Palmer*, 13 Jur. 781; *Hore v. Smith*, 14 Jur. 55; *Re Duke of Norfolk's Estates*, 2 W. R. 817.

Similarly, if knowing that there is a dispute they take two conveyances, one from each claimant, paying two sums into Court, and on the application for investing one sum the other claimant is served, they will have to pay the costs of such service as the two claimants have been treated as vendors and not as litigants. *In re Butterfield*, 9 W. R. 805.

If after the fund is paid in there are rival claimants in respect of it, the promoters, although they will have to pay the costs of the right claimant proving his title, they will not have to pay any additional costs caused by the conduct of the rival claimants. Thus, the costs of affidavits by the two claimants in answer to claims made with respect to persons who answered advertisements for heirs were not payable, but the costs of proving the pedigree of the right claimants were payable. *Re Spooner's Estate*, 1 K. & J. 220. If on an application there are rival claims and a question of title is argued, the promoters pay only

Sect. 80. one set of costs, apparently that of the successful party. *In re James Longworth*, 1 K. & J. 1; *Ex parte Yates*, 20 L. T. (N.S.) 940; *In re Catling's Estate*, W. N. (1890), 75; but in one case where the promoters were ordered to pay one set of costs, that set was to be the best costs for the parties, the balance to come out of the fund. *Re Mid Kent Railway Act, Ex parte Styant*, Joh. 387.

The unsuccessful claimants may be ordered to pay the petitioner's costs occasioned by their adverse claim as well as their own costs. *Ex parte Great Western Railway Company*, 1. R. 11 Eq. 497.

If two applications for payment of dividends are rendered necessary by reason of disputes between a tenant for life and his incumbrancers, the promoters will not be required to pay the costs of the second application. *In re Jolliffe*, 3 Jur. (N.S.) 633.

If the parties present before the Court are required to argue a question of construction, and the costs are not thereby increased, the promoters will be liable to pay all the costs. *Tooke's Trusts*, 16 Jur. 708.

Where costs are incurred by reason of the Court being required to say how a fund is to be distributed under the Act, these costs are not costs of adverse litigation and are payable by the promoters. Thus where the Court are required to determine the interests of a lessee and a remainderman in the fund under section 74, the company must pay all costs. *Askew v. Woodhead*, 14 Ch. D. 27, p. 36. Similarly, if the fund in Court is deposited in respect of land in the possession of a mortgagee, and the mortgagor petitions for an inquiry as to what was due on the mortgage and for payment to him of the residue, the promoters will be ordered to pay the costs of the petition and of the inquiry (*In re Bareham*, 17 Ch. D. 329; *In re Olive's Estate*, 44 Ch. D. 316), and also of an enquiry to ascertain the different interests of several persons in land taken and assessed for a lump sum (*Ex parte Great Western Railway Company*, 11 I. R. Eq. 497), and of the argument upon a question of construction, so as to ascertain a class among whom the money is divisible. *Re Gregson's Trusts*, 2 H. & M. 504, reversed on appeal as to another point. 13 W. R. 193.

Apportionment of Costs among several Bodies.—If there are two or more funds in Court paid in by different corporate bodies, the applications in respect of them should as far as possible be made on one summons or petition. See section 70, note "Practice Generally," *ante*, p. 171.

The rule as to how the costs should be borne was laid down by the Lords Justices in *Ex parte the Bishop of London*, 2 De G. F. & J. 14, where a form of order will be found. According to that rule the costs of the petition and of the purchase are payable in equal proportions by the companies or corporations, but the costs of the *ad valorem* stamp is to be payable rateably by them according to the respective amounts of the funds. It has also been held that the surveyor's fee should be paid rateably. *Ex parte Corporation of London*, 5 Eq. 418. Such fee is usually a commission of so much per cent. on the amount of the purchase money, and the taxing master may allow a fee so calculated. *Attorney-General v. Drapers Company*, 9 Eq. 69.

There appears to be some doubt as to whether the above rule that the costs are to be borne equally is applicable when there is great inequality in the amount of the funds to be invested. In cases where the scale fee is adopted there is, since the passing of the Solicitors Remuneration Act, 1881, a means of apportioning the costs of purchases

of land, and CHITTY, J., recently ordered the scale fee to be apportioned **Sect. 80.**
 nately according to the amounts. *In re Bishopsgate Foundation* (1894),
 1 Ch. 185.

Previous to the passing of the above Act, STUART, V.C., in *Ex parte*
Christ Church (9 W. R. 473), and MALINS, V.C., in *Ex parte St. Bartho-*
lome's Hospital (20 Eq. 369), had held that in cases of great inequality
 in the amounts contributed from the different sources, the cost of
 investment in land ought to be borne in proportion to the amount
 contributed.

JESSE, M.R., in *Ex parte Gaskell* (2 Ch. D. 360), appeared to hold
 the same opinion in regard to investment in land, but held that where
 the petition is merely for payment out that the costs should be borne
 equally, as the costs of such a petition would be the same in the case of
 a large sum as of a small one. But now that sums under 1,000*l.* may be
 paid out upon application by summons, NORTH, J., in a case for transfer
 of funds paid in by three companies, ordered that as the funds of two
 of the companies were each under 1,000*l.* that these companies should
 only have to pay the amount which they would have to pay if the
 application had been made by summons. *Attorney-General v. St. John's*
Hospital, Bath (1893), 3 Ch. 151. Where, however, there were several
 bodies, and proceeding by petition was cheaper, the costs of a petition
 for transfer was ordered to be borne equally although certain of the
 sums were under 1,000*l.* *Re Rector of St. Albans, Wood Street*, 66 L. T.
 (S.S.) 51. See also *Ex parte Curate of Bilston*, 37 W. R. 460 and note,
supra, "Fund invested with other money," p. 202.

The rule that the costs must be borne equally was observed more
 strictly in the earlier cases. PAGE-WOOD, V.C., in *Ex parte the Governors*
of Christ's Hospital (2 H. & M. 166), held that mere inequality was not
 a ground for departing from the rule, and that the rule applied, except
 in cases of oppression, as when a particular company had been vexed by
 a number of petitions while other companies were let off with one only.
 The Lords Justices, in *In re Byron's Estate* (1 De G. & S. 358), held that
 the rule was not to be disturbed except in cases of extreme hardship,
 and refused to disturb it, although only a small part of a remnant of a
 fund in Court was to be taken to make up the price with other larger
 sums, so that a third application in respect thereof would have to be
 made. *In re Merton College*, 1 De G. J. & S. 361; *Ex parte Trinity College,*
Cambridge, 18 L. T. (N.S.) 849.

The Court of Appeal in *In re Leigh's Estates*, 6 Ch. 887, followed the
 above rule in the case of payment out of the money to be applied in
 buildings, although there was considerable inequality, and see also
London and Brighton Railway Company v. Shropshire Union Railway
Company, 23 Beav. 605.

When Companies have amalgamated.—If money has been paid into
 Court by several companies which afterwards amalgamate, the new
 company formed of the amalgamated companies, for the purposes of
 costs of investment is to be treated as one company, so that if money is
 paid in by four different companies and three amalgamate, the costs of
 investing the whole fund will be borne equally by the new company
 and the other company instead of the amalgamated company bearing
 three-fourths and the other one-fourth. *Ex parte Corpus Christi College,*
Oxford, 13 Eq. 334; *Ex parte Gaskell*, 2 Ch. D. 360, not following *In re*
Maryport Railway Act, 32 Beav. 297, and see also *In re Midland Great*
Western Railway Company, 9 L. R. Ir. 16.

Sect. 80. In an earlier case where three railway companies had taken land and paid money into Court, and afterwards one company leased its railway to one of the others for 999 years, but existed to receive the rental and distribute it, the costs were ordered to be paid in equal shares by the three companies. *Re Carlisle and Silloth Railway Company*, 33 Beav. 253.

And with respect to the conveyances of lands,(a) be it enacted as follows:—

Form of
convey-
ances.

81. Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be, according to the forms in the Schedules (A.) and (B.) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules, or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

(a) Sections 81—83.

The forms in the schedule are not in general use as they are difficult to alter for the purpose of inserting recitals, covenants, and other provisions, and since the Conveyancing Act, 1881, their use does not lead to brevity, compared with the ordinary forms.

Costs of
convey-
ances.

82. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the

seller as of the purchaser, of all conveyances and assurances **Sect. 82.** of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

"All Charges and Expenses Incurred."—The 11th rule in Sched. I, Part 1, of the General Order under the Solicitors Remuneration Act, 1881, provides that "in case of sales under the Lands Clauses Consolidation Act, or any other private or public Act under which vendor's charges are paid by the purchaser, the scale shall not apply."

The intention is that the liberal allowance to vendors of costs under section 82 shall not be interfered with. The above order, therefore, applies to sales only, that is to say, to the costs of the vendor; but if promoters employ a solicitor to negotiate purchases, his costs are governed by the scale. *In re Stewart*, 41 Ch. D. 494; *In re Merchant Taylor's Company*, 30 Ch. D. 28.

In the same case *KAY, J.*, held that the scale does not apply to the grant of an easement, such as the right to lay and maintain water pipes through the lands of other persons.

"Of all conveyances."—The conveyance begins when the thing to be conveyed is ascertained. The promoters are not liable, therefore, for the costs of ascertaining what is to be conveyed, and are not, therefore, required to pay the cost of apportioning the rents where a part of leasehold premises is purchased by agreement. The costs of preparing a map to be annexed to the conveyance, also of a schedule showing the apportionment, including the surveyor's charges for looking over it, are payable by the promoters. *Ex parte Buck*, 1 H. & M. 519. As to costs of apportionment, see notes to section 80, *ante*, p. 198, and section 119, *post*, p. 267. The costs of conveyancing counsel are payable subject to taxation. *In re Spooner's Estate*, 1 K. & J. 220.

Where a railway company purchased lands from a colliery company, and part of the agreement was that the railway company should carry the vendor's coals at a fixed price, it was held that this agreement was collateral, and that the costs of the instrument embodying the agreement were not payable by the company as part of the costs of the conveyance. *Re Leitch and Kewney*, 15 W. R. 1055.

"Of deducing, evidencing, and verifying the title."—If the promoters of an undertaking require letters of administration to be taken out or some act to be done in order that the vendor may be able to formally complete a title which is in substance good, they will have to pay the costs thereof. Thus, where a testator had bequeathed leasehold property and the executor had died, the promoters, in order to acquire a good title, required that administration *de bonis non* should be taken out, they were ordered to pay the costs thereby occasioned. *In re Liverpool Improvement Act*, L. R. 5 Eq. 282, overruling *In re South*

Sect. 82. *Wales Railway Company*, 14 Beav. 422, a case where proceedings were required under the Trustee Acts to enable an infant to convey; and see *Re Manchester and Southport Railway Company*, 19 Beav. 365; *In re Lowry's Will*, 15 Eq. 78. So, where land was to be purchased from the transferee of a deceased mortgagee whose heir could not be discovered, the promoters were ordered to pay the costs of a petition by the vendor for the appointment of a person to convey to the company in place of the heir-at-law. *Re Nash's Estate*, 4 W. R. 111; *Re Eastern Counties, &c., Railway Company*; *Ex parte Cave*, 26 L. T. (o.s.) 176.

In a case where a landowner had agreed to sell land to a company, and it appeared that a small part thereof was mortgaged, the company were held not to be liable to pay the costs occasioned in getting the mortgage discharged, the Court apparently being of opinion that the vendor had agreed to sell the fee freed from the mortgage, and it was expressly stated that the case was so decided, owing to the peculiar circumstances. *Ex parte Phillips*, 32 L. J. Ch. 102.

The principle laid down in *In re Liverpool Improvement Act*, *supra*, has been adopted in two recent cases in Ireland, and it was held that promoters taking land from a person who had been in possession of leasehold premises for more than twelve years were bound to pay not only the costs of taking out administration to the previous assignee of the premises, but of the conveyance by the administrator of such assignee to the person in possession. *In re Dublin (South) City Market Company*, *Ex parte Keatley*, 25 L. R. Ir. 265.

The promoters cannot by executing a deed poll under section 76 escape the payment of these costs, for if they are incurred in order to have the money paid out of Court, they will be ordered to pay them. *In re Dublin Junction Railways*, *Ex parte Kelly*, 31 L. R. Ir. 137. And if they pay money in because the vendors refuse to stamp certain documents, they will have to pay the costs of the application to have it paid out. *Ex parte Birkbeck Freehold Land Society*, 24 Ch. Div. 119. And if after a conveyance has been prepared the promoters pay the money into Court, they will be ordered, under section 80, to pay the costs incurred in and about the abstract and preparation of the conveyance. *In re Crystal Palace Railway Company and In re Divers*, 1 Jur. (N.S.) 995.

Costs of deducing title have been allowed under a special Act, which merely directed that the company should pay the costs of "contract, sale, and conveyance." *Ex parte Trustees of Addey's Charity*, 12 L. J. Ch. 513. But if there is no such provision in the Act and the Lands Clauses Acts are not incorporated, the Court has no jurisdiction to order the costs either of deducing the title or of the conveyance, but it would appear that such costs can be paid out of the purchase money in Court. *Re Strachan's Estate*, 9 Ha. 184.

Prior to the Conveyancing Act, 1881, when a person had contracted to sell land and died, and the estate descended to an infant heir or devisee, or if he died intestate and without an heir, proceedings had to be taken either under the Trustee Acts or by action to enable the purchaser to obtain the conveyance. In such cases questions frequently arose as to whether or not promoters were liable to pay the costs thereby occasioned. See cases collected in Browne and Theobald's "Law of Railways," 2nd edit., p. 206. By section 4 of the above Act, the personal representatives are empowered to convey "where at the death of any person there is subsisting a contract enforceable against his heir or devisee for the sale of the fee simple or other freehold interest descendible to his heirs in general in any land."

83. If the promoters of the undertaking and the party **Sect. 83.** entitled to any such costs (a) shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing **Taxation of costs of conveyances.** masters of the Court of Chancery (or by a Master in Chancery in Ireland), (b) upon an order of the same Court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said Master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said Court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; (c) and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said Master, and deducted by him accordingly in his certificate of such taxation.

(a) These are the costs mentioned in last section.

(b) These words have been repealed by the Statute Law Revision Act, 1892.

(c) Sections 34 and 53, and see notes thereto, *ante*, pp. 76, 103.

“Upon an Order.”—For Forms of Order, see Seton “On Decrees,” 5th edit., p. 2044.

Promoters who have paid the costs of conveyance cannot obtain subsequently an order as of course to have their costs taxed under this section, and such an order will be set aside. *Ex parte Somerville*, 23 Ch. D. 167. Where an inquisition has been abandoned and occupation has been given on the company's undertaking to pay costs, it would appear that they cannot be taxed under this section. *Marquis of Drogheda v. Great Southern and Western Railway Company*, 12 Ir. Eq. 103.

The Court has jurisdiction to review the Master's taxation under this section. *Owen v. London and North Western Railway Company*, L. R. 3 Q. B. 54, p. 60; *Sandbach Charity Trustees v. North Staffordshire Railway Company*, 3 Q. B. 1, p. 5.

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows : (a)

Sect. 84. **84.** The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the bank, in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein: Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

(a) Sections 84—91.

"Shall not enter."—The interference with an easement belonging to a neighbouring owner over the land taken is not an entry upon the easement within this section, and the owner's remedy is not an action for injunction, but for compensation under section 68, and this is so whether or not the definition of lands in the special Act includes easements and rights over lands. *Clark v. London School Board*, 10 Ch. 120; *London School Board v. Smith*, W. N. (1895) 37; *Duke of Bedford v. Dawson*, 20 Eq. 253; *Wigram v. Fryer*, 36 Ch. D. 87; *Macey v. Metropolitan Board of Works*, 33 L. J. Ch. 377; *Temple Pier Company v. Metropolitan Board of Works*, 13 W. R. 535; *Bush v. Trowbridge Waterworks Company*, 19 Eq. 291.

If a company are empowered to create an easement over the lands of another, then they cannot proceed to create that easement without the consent of the owner or by taking proceedings under the Act to acquire such easement. *Hill v. Midland Railway Company*, 21 Ch. D. 143; and see *Great Western Railway Company v. Swindon, &c., Railway Company*, 9 A. C. 787.

And if they are not empowered to create an easement they cannot, of course, enter upon land for that purpose, as, for example, to make an accommodation pathway. They must purchase the land. *Rangely v. Midland Railway Company*, 3 Ch. 306.

If a company are authorised to make a tunnel or to throw a bridge over land, this, in the absence of special provision, does not enable them to acquire only the stratum of land necessary for this purpose; they must take the whole of the land from the centre of the earth *usque ad cælum*. If they attempt to enter by depositing only the value of the stratum, or give notice to treat only for the stratum, they will be restrained from proceeding with their works. *Ramsden v. Manchester, South Junction, and Altrincham Railway Company*, 5 R. C. 352; *Pinchin*

v. Blackwall Railway Company, 1 K. & J. 34. The special Act may, of Sect. 84. course, empower the company to acquire an easement only. See *Great Western Railway Company v. Swindon Railway Company*, 9 A. C. 787.

It has been the custom in Acts of Parliament and otherwise to describe as easements such rights as those of making tunnels under land without taking the surface, or of throwing bridges over land, or of dedicating footpaths to the use of the public. To call these "easements" is, however, inaccurate. In *Metropolitan Railway Company v. Fowler* [1893], A. C. 416, it was held that a tunnel is an interest in land—a corporeal hereditament, and not merely an easement. The dedication of a public footway is also not an easement. See per CAIRNS, L.J., *Rangely v. Midland Railway Company*, 3 Ch. 306, p. 310, and note to section 3, "Lands," ante, p. 7.

The right to make a tunnel without being under the obligation to take the surface is, therefore, the right to take an interest in land. It does not matter whether the special Act authorises the company to "appropriate and use the subsoil," as such words are equivalent to "take." See *Metropolitan Railway Company v. Fowler*, supra. A company so authorised to make a tunnel may be restrained by injunction if they proceed to extract the subsoil without proceeding according to this Act, by purchasing the same, or apparently by deposit under section 85. *Farrer v. Waterloo and City Railway Company* (1895), 1 Ch. 527.

The placing of materials on the land with the consent of the tenant is not an entry on the lands so as to entitle the landowner to apply for an injunction. *Standish v. Mayor of Liverpool*, 1 Dr. 1.

Besides the remedy by injunction the promoters are also liable to a penalty for wrongfully entering upon land. See section 89, *infra*.

"Except by Consent."—If the landowner consent to the entry he cannot treat the promoters as tenants at will, and in the event of a dispute arising revoke the consent and bring an action of ejectment or trespass. His remedy is to recover compensation under the Act. *Knapp v. London, Chatham, and Dover Railway Company*, 11 W. R. 890; *Doe & Hudson v. Leeds and Bradford Railway Company*, 16 Q. B. 796.

The landowner may by his conduct and silence be considered to have consented, and if so an injunction will not be granted at his instance (*Greenhalgh v. Manchester and Birmingham Railway Company*, 3 My. & Cr. 784), but merely refraining from taking action is not enough, as, for example, if the owner did not know that the land, being a roadway, did not belong to him. *Marquis of Salisbury v. Great Northern Railway Company*, 5 C. B. (N.S.) 174.

If there is a dispute as to whether a landowner has consented or not and a company have entered, the Court will not interfere by injunction to stop the works, but will order the proximate value to be deposited until the amount is determined. *Langford v. Brighton, Lewes and Hastings Railway Company*, 4 R. C. 65. A similar order was made where it was shown that a company had found it necessary to enter in order to insure public safety, and that subsequent to the entry the landowner had treated with the company in respect thereof. *Tower v. Eastern Counties Railway Company*, 3 R. C. 374. As to entry upon land to repair damage caused by accident and ensure safety, see the Railways Regulation Act, 1842 (5 & 6 Vict. c. 55), ss. 14 and 15, in note to section 16 of the Railways Clauses Act, 1845, *post*.

"Until they shall have paid."—This section must be read with the further proviso in section 85 enabling the promoters of an under-

Sect. 84. taking upon certain conditions to enter without the consent of the owner and before making payment or deposit, as mentioned in this section. If they enter with the consent of the owner, or without his consent under that section, the landowner has in respect of his purchase money the ordinary equitable lien of an unpaid vendor which can be enforced by action, whether the price has been determined by agreement or by inquisition. See the cases collected in notes to section 85, note "Vendor's lien;" and see, for example, *Wing v. Tottenham and Hampstead Junction Railway Company*, 3 Ch. 740.

"To every party having any interest."—An action will lie for an injunction to restrain a company retaining possession of land, even where the plaintiff's interest is merely a lien for improvements done to the land (*Rogers v. Dock Company at Kingston-upon-Hull*, 34 L. J. Ch. 165), or an equitable right to possession under building agreements. *Birmingham and District Land Company v. London and North Western Railway Company*, 40 Ch. D. 268.

If the promoters take possession and by mistake some interest is omitted to be purchased, they are entitled to remain in possession for six months to enable them to purchase. See section 124, and notes, *post*, p. 272.

"Of Surveying."—If the promoters enter for this purpose they must give the requisite notice, but where they had entered without such notice, but merely to survey and level and set out the line of their works, the Court refused to grant an injunction, on their undertaking not to proceed further without giving the proper notices. *Fooks v. Wilts, Somerset and Weymouth Railway Company*, 4 R. C. 210.

Promoters to be allowed to enter on lands before purchase, on making deposit by way of security and giving bond.

85. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made, or verdict given for the purchase money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the bank by way of security, as hereinafter mentioned, either the amount of purchase money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, with two

sufficient sureties to be approved of by two justices in case **Sect. 85.**
 the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase money or compensation, as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon, at the rate of five pounds *per centum per annum*, from the time of entering on such lands, until such purchase money or compensation shall be paid to such party, or deposited in the bank for the benefit of the parties interested in such lands, under the provisions herein contained ; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.

In the case of railway companies this section has been amended by the Railway Companies Act, 1867 (see 30 & 31 Vict. c. 127, s. 36, *post*). By that Act the Board of Trade appoints the surveyors and approves the sureties.

"The promoters of the undertaking."—Where the promoters are a public authority, the special Act may contain provisions wide enough to exclude sections 84 and 85 ; thus it was held that the Metropolitan Board of Works might enter upon land for the purpose of making a sewer under the powers of their Act which incorporated these sections, without depositing the purchase money or executing a bond. *North London Railway Company v. Metropolitan Board of Works*, 29 L. J. Ch. 909 ; and see per *COTTON, L.J.*, *In re Corporation of Dudley*, 8 Q. B. D. 86, p. 96.

In the case of water companies, see Waterworks Clauses Act, 1847, section 6 (*post*), which empowers them to enter upon streams on making a deposit.

"Before an Agreement," &c.—It is not clear as to whether the promoters can proceed under this section until after they have either given a notice to treat under section 18, or made an agreement to pur-

Sect. 85. chase. Lord WATSON, in *Tiverton Railway Company v. Loosemore*, 9 A. C. 480, p. 501, and in *Great Western Railway Company v. Swindon Railway Company*, 9 A. C. 787, p. 805, he gave it as his opinion that the promoters could not enter and use under this section until they had acquired a right as purchasers under an inchoate or imperfect contract constituted by compulsory notice to treat or by agreement. In the former case this opinion was not questioned by either Lords CAIRNS or BLACKBURN, but in the latter case Lord BRAMWELL (p. 810) expressed the opposite opinion, and considered that the sections dealing with the taking of land (sections 16—68) had no application to those in regard to entering upon land, i.e., to sections 84—91, and Lord FITZGERALD apparently agreed with him. Cf. *Ford v. Plymouth, &c., Railway Company*, W. N. (1887), p. 210.

If the company desired to enter in order to acquire a perpetual easement under their special Act, it is not necessary that the capital should be subscribed as provided by section 16. *Great Western Railway Company v. Swindon Railway Company*, 9 A. C. 787.

It is clear, however, that once they have given the notice to treat that they can enter under this section at any time until the expiration of the time limited for carrying on the works.

Thus, they may enter after having given notice of their intention to summon a jury, and may change the appearance of the land so that a jury may not be able to form an opinion as to its value. *Langham v. Great Northern Railway Company*, 1 De. G. & S. 486.

If the notice to treat has been given, the entry under this section can be made after the period for compulsory purchase has expired as such entry is not an exercise of the powers of compulsory purchase (*Salisbury v. Great Northern Railway Company*, 17 Q. B. 840), and it can be made at any time before the expiration of the time limited for the execution of the works if made *bond fide* and for the purpose of the works, and whether the works can be completed within the time limited or not, and the promoters can continue in possession after that time and complete the works. *Tiverton Railway Company v. Loosemore*, 9 A. C. 480. Similarly, after such entry, the amount of the purchase money may be assessed subsequently to the expiration of the time limited for completion of the works. *S. C.* and *Doe d. Armitstead v. North Staffordshire Railway Company*, 16 Q. B. 528.

It has been said that a company cannot take advantage of this section unless there is urgent necessity for immediate entry on the lands (per MALINS, V.C., in *Field v. Carnarvon and Llanberis Railway Company*, 5 Eq. 190), but in *Loosemore v. Tiverton*, 22 Ch. D. 25, p. 46, SELBORNE, L.C., pointed out that there were no words to that effect in the Act, and see FRY, J., to the same effect; and cf. *Willey v. South Eastern Railway Company*, 6 R. C. 100.

If a notice to treat has been given and the promoters enter under this section, it is doubtful whether they can be compelled to proceed, or whether they themselves can proceed under section 23 to have compensation ascertained, or whether the landowner must take the initiative and have the compensation assessed under section 68. Lord COTTENHAM considered section 68 applicable, and refused to order a company who had entered under section 85 to summon a jury under section 23. *Adams v. London and Blackwall Railway Company*, 2 M. & G. 118. In *Tiverton Railway Company v. Loosemore*, 9 A. C. 480, Earl CAIRNS thought that the proceedings should go on under section 68 (p. 491), but Lord BLACKBURN thought that the landlord might proceed under the notice to treat, and saw nothing to

prevent the promoters from issuing their warrant and having the price **Sect. 85.** ascertained against an unwilling vendor after they have entered (pp. 498, 499).

Deposit the Amount of the Purchase Money.—As to how the deposit is to be made, see section 86, and Supreme Court Fund Rules, 1886, set out in the notes to section 69, *ante*, p. 146.

The amount to be deposited should include not only the actual value of the land, but also the compensation for severance and for injuriously affecting the lands held therewith, which matters are to be taken into account in assessing the purchase money. *Field v. Carnarvon and Llanberis Railway Company*, 5 Eq. 190, and see sections 49 and 63, *ante*, pp. 94, 110.

Where a railway company were authorised to construct a tunnel through land without purchasing the surface, unless it was found by a jury or arbitrator that the tunnel could not be made without risk thereto, it was held that only the value of that right or stratum need be deposited before entry. *Hill v. Midland Railway Company*, 21 Ch. D. 143.

Where a railway company are by their special Act authorised to take part only of buildings, if in the opinion of a jury or arbitrator they can be severed without material detriment, and an arbitrator decides that they can be so severed, the company can enter under this section on depositing only the value of the part to be taken. *Lambert v. Dublin, Wicklow, and Wexford Railway Company*, 25 L. R. Ir. 163.

It has been held that it is the value of the land referred to in the notice to treat that is to be deposited. Where by subsequent negotiations between surveyors of the parties it was agreed that less land should be taken than that stated in the notice to treat, and the amount deposited was in respect of that lesser quantity, the entry was held bad as the surveyor was not the landowner's agent to make this alteration, or to make the claim in respect thereof. *Ford v. Plymouth, &c., Railway Company*, W. N. (1887) 201.

Where a company had given notice to treat for ten parcels of land apparently used together, it was held that they could not enter upon eight of them by depositing the value of the eight only, but that they must deposit the value of, and give security for, the whole (*Barker v. North Staffordshire Railway Company*, 5 R. C. 401). Possibly these decisions may be affected by what appears to be the ruling of the House of Lords in *Great Western Railway Company v. Swindon Railway Company*, 9 A. C. 757, that section 85 is wholly independent of section 18.

It has frequently been held that in cases where a notice to treat has been given and the landowner has given a valid counter-notice under section 92 requiring that the whole of a house or building should be taken, that the promoters can only enter upon the land after depositing the value of the whole. *Giles v. London, Chatham, and Dover Railway Company*, 84 L. J. Ch. 603; *Underwood v. Bedford and Cambridge Railway Company*, 7 Jur. (N.S.) 941; *Gardner v. Charing Cross Railway Company*, 2 J. & H. 248. Whatever a company are bound to take under the 92nd must be taken into account and valued if they proceed under the 85th section, so that the value of trade fixtures and machinery in a manufactory must be deposited. *Gibson v. Hammersmith Railway Company*, 11 W. R. 299. If the counter-notice is invalid, deposit of the value of the part required will be sufficient. *Tiverton Railway Company v. Loosemore*, 9 A. C. 480.

In a case where the valuation was made by a surveyor appointed under the Lands Clauses Act, for a railway company who entered after

Sect. 85. the passing of the Railway Companies Act, 1867, on depositing the value so determined, such entry was held invalid, on the ground that the valuation should have been made under the later Act. *Field v. Carnarvon and Llanberis Railway Company*, 5 Eq. 190.

In two cases where the valuation exceeded the amount in Court, the promoters have been ordered subsequently to bring the difference into Court. *Ashford v. London, Chatham and Dover Railway Company*, 14 L. T. (N.S.) 787; *Ex parte London, Tilbury, and Southend Railway Company*, 1 W. R. 333.

Minerals.—The law in respect of minerals when taken by railway companies will be found in the notes to sections 77—85 of the Railways Clauses Act, 1845, *post*.

As railway companies need not purchase the minerals under the lands, they may enter upon the lands under this section without depositing the value of the minerals, at least, if they are not included in the notice to treat. If, however, after entry without depositing the value of the minerals, they remove any of the minerals, they will be liable in an action of trespass in respect thereof. *Loosemore v. Tiverton Railway Company*, 22 Ch. D. 25, pp. 42, 43, and 9 A. C. 480.

In such a case the compensation payable under sections 78 and 81 of the Railways Clauses Act need not be included in the bond or deposit, although included by agreement in the arbitration held afterwards as to the purchase money, and the condition of the bond will be satisfied without paying such compensation. *Ex parte Neath and Brecon Railway Company*, 2 Ch. D. 201; cf., *In re Lord Gerard and London and North Western Railway Company* (1895), 1 Q. B. 459.

“Claimed by any party interested.”—Where there are mortgagees security should be given in respect of their interest, and it is not enough to pay in the value of the land in the name of the mortgagor, and to execute a bond in his favour, although the amount may be sufficient to cover both claims. *Ranken v. East and West India Docks Railway Company*, 12 Beav. 298.

It is competent for promoters to deal solely with any person having a beneficial interest in respect of that interest, and to deposit the value thereof, and give a bond to that person only. *Willey v. South Eastern Railway Company*, 1 M. & G. 58.

“Surveyor appointed by two Justices.”—The appointment is made in the manner provided by section 59.

As there is no provision as to notice the promoters may proceed to have the surveyor appointed and sureties approved *ex parte*, and without notice to the landowner. *Bridges v. Wilts, Somerset, and Weymouth Railway Company*, 16 L. J. Ch. 335; *Langham v. Great Northern Railway Company*, 1 De G & S. 486.

If the general valuer of the company is appointed, who has acted as negotiator for the company, the appointment will not on that ground be invalid, although such appointment is unsatisfactory. *Langham v. Great Northern Railway Company*, 5 R. C. 263, p. 266.

As regards railway companies, however, the law has been altered by the Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 36, *see post*. The appointment under that Act is now made by the Board of Trade, and the company are required to give seven days' notice of their intention to apply for the appointment.

"The value of such Lands."—The surveyor must examine the premises in such a manner as to enable him to form a fair judgment. Mere inspection of the exterior is not sufficient. If it is done fairly the Court will not disturb it. *Cotter v. Metropolitan Railway Company*, 12 W. R. 1021. **Sect. 85.**

If the money has been deposited and the bond executed before the surveyor has published his written valuation, this will not invalidate the possession, if it can be shown that the amount had been fairly and properly determined, and that it was by some accident that the surveyor's award was not signed till after the money was paid in. *Stamps v. Birmingham, Wolverhampton, and Stour Valley Railway Company*, 7 Ha. 251, 256.

"Give to such party a bond."—If the amount deposited is insufficient, the bond also will be invalid. See cases in note, "Deposit the amount of the purchase money," *supra*, p. 225. If the promoters enter into possession after giving a defective bond, the Court will not restrain that possession if a subsequent valid bond is given, but will consider it as a possession under this section. The Court will, however, take care that a proper bond is executed giving the owner the benefit of the Act. *Willey v. South Eastern Railway Company*, 1 M. & G. 58; *Poynder v. Great Northern Railway Company*, 2 Ph. 330.

The land need not be specially described in the bond if it is identified by the prior transactions. *Willey v. South Eastern Railway Company*, 1 M. & G. 58, 68; *Cotter v. Metropolitan Railway Company*, 12 W. R. 1021.

The Condition.—The section requires that the bond shall be conditioned "for payment to such party or deposit in the bank for the benefit of the parties interested." No equivalents ought to be introduced otherwise the bond may be invalid. Thus the addition of the words "or otherwise" after "deposit in the bank" was held to invalidate the bond (*Hosking v. Phillips*, 3 Ex. 168); also of the words "on demand" before "pay" and "deposit" (*Poynder v. Great Northern Railway Company*, 2 Phil. 330; *Langham v. Great Northern Railway Company*, 5 R. C. 263), and of the words "shall at any time hereafter" before "pay." *Cotter v. Metropolitan Railway Company*, 12 W. R. 1021.

If, after the name of the party are added, the words "his heirs, executors, administrators, and assigns" the bond will not be invalid, for it is in effect implied that if the party dies payment shall be made to the party entitled to his estate, if freehold to his heirs, if leasehold to his executors (*Hosking v. Phillips*, 3 Ex. 168), so that if the interest of the party is leasehold it is proper and sufficient to add "his executors, administrators, and assigns." *Willey v. South Eastern Railway Company*, 1 M. & G. 58. If the promoters are dealing with the owner of a particular interest only, such as a lessee, the words "the parties interested" may be omitted. S. C.

If the owners of the land are tenants in common the bond will be bad, if the deposit is made in their names jointly, and the condition drawn in a form treating them as joint tenants. *Langham v. Great Northern Railway Company*, 5 R. C. 263.

"With two sufficient Sureties."—In the case of railway companies these must now be approved by the Board of Trade. *Railway Companies Act, 1867, s. 36, post.*

Sect. 85. But under neither Act is the approval required unless the parties differ, and the bond will be valid without such approval unless the landowner dissents. *Loosemore v. Tiverton Railway Company*, 22 Ch. D. 25, p. 41; 9 A. C. 480.

Sureties are required whether the bond is given by a corporation or an individual, and it would appear that the corporation and sureties should enter into the bond jointly and severally. *Barker v. North Staffordshire Railway Company*, 2 De G. & S. 55.

When land is purchased for the purposes of the Crown, sureties are not generally required. See, for example, the Post Office (Land) Act, 1881, s. 3, *post*; the Military Lands Act, 1892, s. 2, *post*.

"Together with interest thereon."—If the promoters enter under an invalid bond, and a valid one is afterwards executed, it would appear to be doubtful as to the date from which the interest is to be calculated. *Willey v. South Eastern Railway Company*, 1 M. & G. 58.

If the promoters neglect to issue their warrant to summon a jury for 21 days, as provided by section 68, the amount claimed can be recovered, and in an action to recover that amount, it has been held that section 85 gives interest thereon, from the date of taking possession to the date of judgment at the rate of 5l. per cent. *In re The Aberdare Railway Company*, 8 W. R. 603.

As to interest generally, see note to section 6, *ante*, p. 18.

"To enter upon and use."—As to entering, see section 84, note, "Shall not enter," *ante*, p. 120.

If the landowner refuse to deliver up possession, the promoters can issue their warrant to the sheriff to deliver possession of the same under section 91, *infra*, and it was held by FRY, J., in *Loosemore v. Tiverton Railway Company*, 22 Ch. D. 25, p. 41; 9 A. C. 480, that where a landowner refuses to allow a company to enter upon land on which they are entitled to enter under section 85, but does not actually resist their entry, they are justified in entering peaceably without summoning the sheriff.

They can enter under this section in order to acquire an easement or horizontal section of land, if they have power under their act to acquire that only. *Hill v. Midland Railway Company*, 21 Ch. D. 143; *Great Western Railway Company v. Swindon, &c., Railway Company*, 9 A. C. 787.

The power to "use," is intended to enlarge and not to limit the effect of giving possession. It enables the promoters to convert the land at once to their own use, and to use it as their own as if they had entered after payment. The landowner has, therefore, no right to resume possession, and to claim compensation for disturbance of the soil, if the works are not completed by the time limited for the execution of the works. *Tiverton Railway Company v. Loosemore*, 9 A. C. 480; *Doe d. Armitstead v. North Staffordshire Railway Company*, 16 Q. B. 526. The same principle applies in the case of entering by consent. *Doe d. Hudson v. Leeds and Bradford Railway Company*, 16 Q. B. 796, see section 84, note, "Except by consent," *ante*, p. 121.

The landowner might, however, have a right of re-entry in the event of the company becoming insolvent, and his having to enforce his vendor's lien. *Great Western Railway Company v. Swindon, &c., Railway Company*, 9 A. C. 787, p. 810, and see note, *infra*, "Vendor's Lien."

Recovering the Purchase Money.—Vendor's Lien.—If after the promoters of an undertaking have entered into possession of land either by consent, or under this section, the landowner, after the price has been

ascertained or agreed upon, may bring an action for specific performance, **Sect. 85.** or if the conveyance has been executed for the purchase money (see notes to section 6, *ante*, p. 17, and section 36, *ante*, p. 78), and in addition to his remedy by sequestration or otherwise, he may enforce his lien upon the land as any ordinary vendor. With respect to his lien he is in no different position from a vendor of land to any other person. Per **Sturges, L.J.**, *Wing v. Tottenham, &c., Railway Company*, 3 Ch. 745, p. 745. He cannot, however, treat the promoters as trespassers, and bring an action of ejectment against them if they have properly taken possession. *Hudson v. Leeds and Bradford Railway Company*, 16 Q. B. 799. The vendor's lien does not, however, attach where the promoters have agreed to purchase the land in consideration of an annual rent-charge. In such a case the vendor may bring an action for specific performance, and he will probably be entitled to have a receiver appointed. *Earl of Jersey v. Briton Ferry Floating Dock Company*, 7 Eq. 409, following *Winter v. Lord Anson*, 1 S. & S. 434. As to a receiver, see *Eyton v. Denbigh Railway Company*, 6 Eq. 14.

The vendor's lien will not be lost, although the parties agree that the cash payment shall be postponed, and the owner accept securities for its payment on a certain date, if, at that date, the amount due is not paid. *Pell v. Midland and South Wales Railway Company*, 17 W. R. 506.

There is no lien upon the land in respect of the unpaid costs of an arbitration to ascertain the compensation due in respect of the land taken. *Earl Ferrers v. Stafford and Uttoxeter Railway Company*, 13 Eq. 524. As to recovering such costs, see section 34, *ante*, p. 76, note, "Recovery of the costs."

To enforce the lien.—If the vendor desire to enforce his lien, he must in a suit for specific performance, or for the purchase money claim also for a declaration of his lien. If the action has been one for specific performance only, he cannot apply to have the lien enforced, as the enforcement must be preceded by a declaration of the lien. *Attorney-General v. Sittingbourne and Sheerness Railway Company*, 1 Eq. 636, and see note, *infra*, "Procedure."

If, having obtained an order for specific performance and for payment of the purchase money by a certain date, and the declaration as to his lien having been made, the vendor can, if the money is not paid by that date, apply to have the lien enforced and the Court will do so in some or all of the following ways:—

1. By sale of the land.
2. By the appointment of a receiver until the sale.
3. By granting an injunction to restrain the promoters from carrying on their undertaking, and continuing in possession, and by ordering the vendor to be put in possession. See cases, *infra*, and "Fry on Specific Performance," 3rd edit., p. 534.

On an application to enforce the lien an account will be ordered to be taken of the principal, interest and costs due, and an order made that the land be sold within a certain time of the certificate if the money is not previously paid. *Walker v. Ware, Hadham and Buntingford Railway Company*, 1 Eq. 195; *Williams v. Great Eastern Railway Company*, 16 W. R. 821; *Raper v. Crystal Palace and South London Railway Company*, 16 W. R. 413; *Wing v. Tottenham Railway Company*, 3 Ch. 740.

The sale will be ordered although a railway may have been made over

Sect. 85. the land, and although it may have been opened for public use, and in use. The fact that the company have executed a bond or deposited money under this section merely gives them possession, but does not vest the land in them, and in no way affects the landowner's rights as an unpaid vendor, nor does entry by agreement and deposit in the names of trustees in lieu of the statutory deposit. Nor are his rights affected as to the residue of the purchase money, if the money in Court under this section is to be paid out to him. *Walker v. Ware, &c., Railway Company*, 1 Eq. 195; *Wing v. Tottenham Railway Company*, 3 Ch. 740.

Where a railway had been made and opened on land which had not been paid for, and after the vendor had obtained an order for specific performance, and declaration of his lien the company became insolvent; on his petition, an order for sale was made, and a receiver was appointed; but an injunction restraining the company from using the land, or remaining in possession, which had been granted by JAMES, V.C., was dissolved by the Court of Appeal on the ground that the effect thereof would be to make the land useless to both parties. *Munns v. Isle of Wight Railway Company*, 5 Ch. 414.

Where a sale by public auction had been ordered of land over which a railway had been made and opened, and there had been no bid, a resale by auction, or privately has been ordered, but as the vendor had elected to take an order for sale, as his remedy, the Court refused to grant him a rescission of the contract, or to put him in possession until there had been a further attempt to sell. *Williams v. Aylesbury and Buckingham Railway Company*, 28 L. T. (N.S.) 547. But in the above case, when it was afterwards shown that the land could not be sold, an order was made restraining the company from using the land, or remaining in possession and directing that the vendor be put in possession. See "Seton on Decrees," 5th edit., p. 1905, and see form p. 1902.

If it is shewn that the land is unsaleable, such an order will be made without a sale being directed, although the railway is open to public use. *Allgood v. Merrybent and Darlington Railway Company*, 33 Ch. D. 571; and see *Earl Nelson v. Salisbury and Dorset Junction Railway Company*, W. N. (1868), 180, where the injunction was granted in the first instance. In the case of an ordinary sale, the Court has jurisdiction after declaration of a lien if the money is not paid, to order the sale to be rescinded. *Baker v. Williams*, 62 L. J. Ch. 315.

Where a sale has been ordered, an injunction will not be granted restraining the company from using the land until the sale takes place. *Lycett v. Stafford and Uttoxeter Railway Company*, 13 Eq. 261; not following *Earl St. Germans v. Crystal Palace Railway Company*, 11 Eq. 568.

Procedure.—The action for declaration of lien should be brought in the Chancery Division. Judicature Act, 1873, s. 34.

Parties.—If the promoters have leased the line the lessees should be made parties as the lien cannot be enforced by giving possession, unless the parties in occupation are before the Court (*Bishop of Winchester v. Mid Hants Railway Company*, 5 Eq. 17); so, also, ought a company who may be working the line of railway under a traffic agreement (*Marling v. Stonehouse and Nailsworth Railway Company*, 38 L. J. Ch. 306; *Walker v. Ware, &c., Railway Company*, 1 Eq. 195; *Earl of St. Germans v. Crystal Palace Railway Company*, 11 Eq. 568), or under parliamentary powers. *Goodford v. Stonehouse and Nailsworth Railway Company*, 38 L. J. Ch. 307.

Similarly subsequent incumbrancers, ought to be made parties, such as debenture holders, including those who, in another suit, may have obtained a receiver. *Attorney-General v. Sittingbourne and Sheerness Railway Company*, 1 Eq. 636; *Dean v. Somerset and Dorset Railway Company*, 38 L. J. Ch. 232. Sect. 85.
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The declaration of lien, if made, will then be binding on these parties.

Application to enforce lien.—If the money is not paid the application to enforce the lien is usually made by motion (see *Lycett v. Stafford and Uttoxeter Railway Company*, 13 Eq. 261; *Allgood v. Merrybent and Darlington Railway Company*, 33 Ch. D. 571); but may also be made by petition. *Williams v. Aylesbury and Buckingham Railway Company*, 21 W. R. 819; *Ware v. Same ib.*; *Munns v. Isle of Wight Railway Company*, 5 Ch. 414.

Until there is a declaration of lien, the lien cannot be enforced simply on a decree for specific performance. *Attorney-General v. Sittingbourne and Sheerness Railway Company*, 1 Eq. 636. But if all the parties have been before the Court, the declaration of lien may be made on petition in the suit (*Heriot v. London, Chatham, and Dover Railway Company*, 16 L. T. (N.S.) 473), but where all the parties were not before the Court it was held that a new action must be begun. *Attorney-General v. Sittingbourne, &c., Railway Company*, 1 Eq. 636.

Interlocutory Applications.—In an action for specific performance and declaration of lien, the Court will not appoint a receiver, or grant an injunction restraining the use of the land on an interlocutory application, although the company admit their liability, except under special circumstances. *Latimer v. Aylesbury and Buckingham Railway Company*, 9 Ch. D. 385; *Pell v. Northampton Railway Company*, 2 Ch. 100, not following *Cosens v. Bognor Railway Company*, 1 Ch. 594. If the company are destroying the property an *interim* injunction may be ordered, but not where they are using it for the purpose for which it was taken. *Pell v. Northampton Railway Company*, 2 Ch. 100, per TURNER, L.J.

The company, on an interlocutory application, has been ordered to bring the money into Court within three months. *Bond v. Hull and Barnsley Railway and Dock Company*, W. N. (1887) 88; and see *South Eastern Railway Company v. London, Brighton, and South Coast Railway Company*, 14 W. R. 666. This would appear to be the proper procedure. See *Pell v. Northampton Railway Company*, 2 Ch. 100, per CAIRNS, L.J., p. 102.

The Order.—See "Seton on Decrees," 5th edit., p. 1902, *et seq.*

The order may allow the original vendor to bid at the sale. *Lycett v. Stafford and Uttoxeter Railway Company*, 13 Eq. 261; *Ware v. Aylesbury and Buckingham Railway Company*, 21 W. R. 819.

When land taken by a railway company is sold to enforce a vendor's lien, it is sold free from all claims of the public to use it as a highway. *Munns v. Isle of Wight Railway Company*, 5 Ch. 414. In that case, GIFFARD, L.J., said he had no objection to adding to the direction for sale the words "free from all claims of the company, and of all persons claiming through the company."

86. The money so to be deposited as last aforesaid shall be paid into the bank in the name and with the privity of the Accountant-General of the Court of Chancery [in England] Upon deposit being made

Sect. 86. *or the Court of Exchequer in Ireland*], (a) to be placed to his cashier to account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said Court; and upon such deposit being made, the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

(a) These words have been repealed by the Statute Law Revision Act, 1892. The Accountant-General of the Court of Chancery is now the Paymaster-General of the Supreme Court of Judicature. For the procedure on depositing, see the Chancery Fund Rules, 1886, set out in the notes to section 69, *ante*, p. 146.

If the persons interested in the land are tenants in common the money ought not to be deposited in one sum to their joint account. *Langham v. Great Northern Railway Company*, 5 R. C. 263.

The payment in will not be invalid if the title of the account includes the words "*ex parte* the promoters," if the money is paid in to the account of the landowner. *Poynder v. Great Northern Railway Company*, 16 Sim. 3.

If payment is made into any other bank at the request of the landowner, he will suffer the loss should such bank become insolvent. *Paul v. Birmingham, &c., Railway Company*, 11 Hare. 305.

Deposit to remain as a security, and to be applied under the direction of the court.

87. The money so deposited as last aforesaid shall remain in the bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, (a) and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in bank annuities or government securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the Court of Chancery [*in England or the Court of Exchequer in Ireland*], (b) upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed, it shall be lawful for the said Court to order the same to be

applied in such manner as it shall think fit for the benefit Sect. 87.
of the parties for whose security the same shall so have been
deposited.

(a) Section 85. See note "Give to such party a bond," *ante*, p. 227.

(b) These words have been repealed by the Statute Law Revision Act, 1902.

"On the application by petition."—This will now generally be done by summons. As to the procedure, and the securities in which the same may be invested, see notes to section 70, *ante*, pp. 167, 168.

"The condition of such Bond being fully performed."—The payment of costs under section 80 or otherwise is no part of the condition of the bond, and the money will be ordered to be paid out to the promoters if the condition of the bond has been fulfilled, although there may be a question of costs between the vendor and the promoters. *Ex parte Stevens*, 2 Ph. 772; *Ex parte Great Northern Railway Company*, 16 Sim. 169; *Re Wimbledon and Dorking Railway Act*, 9 L. T. (N.S.) 703. Money deposited under this section is deposited for a particular purpose, and when that purpose has been answered it is to be paid out to the promoters. "It shall be lawful," means here that it shall not be lawful to do otherwise. *In re Neath and Brecon Railway Company*, 9 Ch. 263. The Court has no power to devote it to any other purpose, such as the payment of a mortgage when the value of the mortgagee's interest has not been ascertained or agreed. *Martin v. London, Chatham, and Dover Railway Company*, 1 Ch. 501. Where the price has been ascertained, but the landowner being dissatisfied and refusing to execute a conveyance, the company pay the ascertained price into Court, they can obtain the payment out of the sum paid in under section 85. *In re Fooks*, 2 Mac. & G. 357.

Where there is a doubt as to the ownership of the land, but neither claimant is absent, the promoters cannot proceed under sections 58 and 59, and pay into Court the value ascertained by a surveyor, and if they do so, they cannot have the money deposited under section 85 paid out to them until the amount has been ascertained by a jury or arbitrators and paid into Court, as the condition of the bond will not otherwise be fulfilled. *Ex parte London and South Western Railway Company*, 38 L. J. Ch. 527.

"To be repaid."—The procedure on payment out will be found in the notes to section 70, *ante*, p. 168, and should be made by summons if the amount is under 1,000*l*.

If the landowner or his representative does not oppose the application, the Court will consider the fact that the bond is in possession of the promoters sufficient evidence that its conditions have been complied with, and will order the payment out without further evidence of their title. *Re London and North Western Railway Company*, 26 L. T. (N.S.) 687.

The exhibition of the landowner's receipt for the purchase money has been deemed sufficient after a number of years. *Ex parte Midland Railway Company*, W. N. (1894), 38.

Where there are several funds in Court, they may all be paid out on one application, if this can be done without unduly complicating the

Sect. 87. petition. *Re Downpatrick, Dundrum, and Newcastle Railway Company*, I. R. 4 Eq. 497; *Ex parte Midland Railway Company*, W. N. (1894), 38.

On such applications the Court has power under section 80 to order costs incurred by the landowner in connection with the taking of the land to be paid by the promoters. Section 80, note I., "Land taken under section 85," *ante*, p. 198.

Service and Appearance.—As to service generally in applications to Court in regard to moneys deposited, see same note to section 80, *ante*, p. 205.

On applications by the promoters for payment out under this section, it seems clear that, in the absence of special circumstances, the vendor or his representative and persons whose names are mentioned in the account should be served or made co-petitioners. *Ex parte South Wales Railway Company*, 6 R. C. 151; *Ex parte London and North Western Railway Company*, W. N. (1887), 128.

In one case it was held that the requirements of the case would be satisfied by the production of a consent to the withdrawal, in writing under the hand of the landowner. *Re Dyson*, 46 L. T. (N.S.) 730.

In another case, service on the vendor was dispensed with upon production of an affidavit that all costs of the vendor had been paid, but this case does not appear to have been followed. *Ex parte Eastern Counties Railway Company*, 5 R. C. 210.

If the funds in Court have been overlooked for a number of years the money will be paid out to the promoters without service on the landowners. If the time is over fifteen years, the official solicitor must be served, and will be entitled to his costs out of the fund. *Ex parte Lancashire and Yorkshire Railway Company*, 55 L. T. (N.S.) 58; *Ex parte Midland Railway Company*, W. N. (1894), 38; and see Supreme Court Fund Rules, 1886, r. 101, and Chancery Funds Amended Orders, 1874, r. 14, as to service on official solicitor.

The service, when necessary, should be made pursuant to Order 65, r. 27 (19) (see note to section 80, *ante*, p. 205), *i.e.*, a tender of 30s. should be made with an intimation that if the party served appears his costs will be objected to. If this is not done his costs of appearance may be allowed. *Ex parte London and South Western Railway Company*, 38 L. J. Ch. 527; *cf.*, *In re Tottenham and Hampstead Junction Railway Company*, 14 W. R. 669. If such tender is made, costs of appearance will not be allowed if he appears merely to consent (*Ex parte London and South Western Railway Company*, *supra*), but if there are any special circumstances or doubt as to the condition of the bond being fulfilled, costs of appearance will be allowed. *In re Tottenham and Hampstead Junction Railway Company*, 14 W. R. 669.

"If such condition shall not be fully performed."—In actions for specific performance and declaration of lien, the money is usually paid out to the landowner, either with the assent of the promoters, or without their objecting. See *Walker v. Ware*, 1 Eq. 195; *Wing v. Tottenham Railway Company*, 3 Ch. 740.

It has been contended that it could only be paid out either on the petition of the promoters or with their consent; but it has been held that, if the condition of the bond is not fulfilled, the landowner may apply by petition or summons to have the money paid out to him, although the promoters object. *In re Mutlow's Estate*, 10 Ch. D. 130. Mere delay on the part of the promoters to proceed with the conveyance does not appear to be a non-fulfilment of the condition. S. C.

If a company execute a bond and make a deposit but do not enter,

and the intention to take the land is abandoned with the concurrence of the landowner, the company will be entitled to have the deposit paid out to them and the bond cancelled ; but if they do so without his concurrence through inability to pay or otherwise, the landowner would probably be entitled to have his costs thereby occasioned paid to him out of the fund. *Ex parte Birmingham, Wolverhampton, and Dudley Railway Company*, 1 H. & M. 772. Sect. 87.

88. If at any time the company be unable, by reason of the closing of the office of the Accountant-General of the Court of Chancery [*in England or the Court of Exchequer in Ireland*], (a) to obtain his authority in respect of the payment of any sum of money so authorised to be deposited in the bank by way of security as aforesaid, it shall be lawful for the company to pay into the bank, to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise), such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being, addressed to [*the governor and company of*] (b) the bank in that behalf, request, and upon any such payment being made the cashier of the bank shall give a certificate thereof ; and in every such case, within ten days after the re-opening of the said Accountant-General's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the Accountant-General, and upon production of such direction at the Bank of *England* the money so previously paid in shall be placed to the credit of the said Accountant-General accordingly, and the receipt for the said payment be given to the party making the same in the usual way for the purpose of being filed at the report office.

(a) Repealed Statute Law Revision Act, 1892.

(b) Repealed Statute Law Revision Act, 1891.

89. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special Act, without such consent as aforesaid, (a) or without having made such payment for the benefit of the parties interested in Penalty on the promoters of the undertaking entering upon lands without consent

Sect. 89. the lands, or such deposit by way of security as aforesaid, (b) before pay- the promoters of the undertaking shall forfeit to the part-
ment of the pur- in possession of such lands the sum of ten pounds, over an
chase money. above the amount of any damage done to such lands by reason
of such entry and taking possession as aforesaid, such penalty
and damage respectively to be recovered before two justices ; (c)
and if the promoters of the undertaking or their contractor
shall, after conviction in such penalty as aforesaid, continue in
unlawful possession of any such lands, the promoters of the
undertaking shall be liable to forfeit the sum of twenty-five
pounds for every day they or their contractors shall so remain
in possession as aforesaid, such penalty to be recoverable by
the party in possession of such lands, with costs, by action in
any of the superior courts ; (d) Provided always, that nothing
herein contained shall be held to subject the promoters of the
undertaking to the payment of any such penalties as afore-
said, if they shall *bonâ fide* and without collusion have paid
the compensation agreed or awarded to be paid in respect of
the said lands to any person whom the promoters of the
undertaking may have reasonably believed to be entitled
thereto, or shall have deposited the same in the bank for the
benefit of the parties interested in the lands, or made such
deposit by way of security in respect thereof as hereinbefore
mentioned, although such person may not have been legally
entitled thereto.

- (a) Section 84.
- (b) Section 85.
- (c) See definition, section 3.
- (d) Section 90.

“ **Wilfully enter upon.** ”—These words imply an absence of honest belief on the part of the promoters that the conditions precedent have been complied with ; thus, if the surveyor to value the premises be appointed by a justice who is interested as a shareholder, and the company do not know it, and the promoters enter on the amount of such surveyor's valuation being deposited, the entry is not wilful within the meaning of this section. *Steele v. Midland Railway Company*, 21 L. T. (N.S.) 387 ; *Hutchinson v. Manchester, Bury, and Rossendale Railway Company*, 15 M. & W. 314.

The penalties in this section are apparently only given to the occupier. *Armstrong v. Waterford and Limerick Railway Company*, 10 Ir. Eq. 80, p. 64. But even if the section extends to an owner not in possession, the right to recover a penalty does not oust the jurisdiction of the Court to grant an injunction if promoters wrongfully enter. S. C.

90. On the trial of any action for any such penalty as **Sect. 90.**
 aforesaid the decision of the justices under the provisions **Decision**
 hereinbefore contained shall not be held conclusive as to **of justices**
 the right of entry on any such land by the promoters of the **not con-**
 undertaking. **clusive as**
to the
right of
the pro-
motors.

91. If in any case in which according to the provisions of **Proceed-**
 this or the special Act, or any Act incorporated therewith, **ings in**
 the promoters of the undertaking are authorised to enter upon **case of**
 and take possession of any lands required for the purposes of **refusal to**
 the undertaking, the owner or occupier of any such lands or **deliver**
 any other person refuse to give up the possession thereof, or **possession**
 hinder the promoters of the undertaking from entering upon **of lands.**
 or taking possession of the same, it shall be lawful for the
 promoters of the undertaking to issue their warrant, to the
 sheriff to deliver possession of the same to the person appointed
 in such warrant to receive the same, and upon the receipt of
 such warrant the sheriff shall deliver possession of any such
 lands accordingly, and the costs accruing by reason of the
 issuing and execution of such warrant, to be settled by the
 sheriff, shall be paid by the person refusing to give possession,
 and the amount of such costs shall be deducted and retained
 by the promoters of the undertaking from the compensation,
 if any, then payable by them to such party, or if no such
 compensation be payable to such party, or if the same be less
 than the amount of such costs, then such costs, or the excess
 thereof beyond such compensation, if not paid on demand,
 shall be levied by distress, and upon application to any justice
 for that purpose he shall issue his warrant accordingly.

"It shall be lawful."—These words are not words of obligation, and if the landowner refuse permission, the promoters are not bound to call upon the sheriff, but can enter if they can do so peaceably. If the entry would be forcible, the sheriff should be summoned. *PER FRY, J., in Loosemore v. Tiverton, &c., Railway Company*, 22 Ch. D. 25 p. 41, affirmed generally, 9 A. C. 480. Generally as to the effect of the words, "It shall be lawful," see *Julius v. Bishop of Oxford*, 5 A. C. 214.

Costs.—On an application by the landowner to have the amount in Court paid out to him, he was ordered to pay the costs of the sheriff. *Re Turner's Estate and the Metropolitan Railway Act, 1860*, 5 L. T. (N.S.) 524.

Sect. 92. 92. And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof.

Parties not to be required to sell part of a house.

“No Party.”—This means a party able and willing to sell and convey, and includes parties under disabilities who are enabled to sell under section 7, such as the trustees of a charity. *St. Thomas's Hospital v. Charing Cross Railway Company*, 30 L. J. Ch. 395; *Grosvenor v. Hampstead Junction Railway Company*, 26 L. J. Ch. 731.

The owner of a term can claim the benefit of the section; the exercise of his rights does not affect the owner of the fee who will still retain his option. *Pulling v. London, Chatham and Dover Railway Company*, 33 L. J. Ch. 505, p. 508. And if an owner holds leasehold property which he occupies as one house with freehold property, promoters desirous of taking the freehold may be required to take the leasehold also. *Richards v. Swansea Improvement Company*, 9 Ch. D. 425. Similarly, where a house and part of a garden are held under one demise, and the remainder of the garden under another demise, neither part can be taken without the other, if the landowner object. *Macgregor v. Metropolitan Railway Company*, 14 L. T. (N.S.) 354.

And the same principle applies in the case of two buildings held under separate demises, and used as one house for the purpose of business. *Seigenberg v. Metropolitan District Railway Company*, 49 L. T. (N.S.) 554.

Statutory provisions as to user of land taken.—If provisions are inserted in the special Act by which the inconvenience, caused to the occupiers of houses or manufactories, by a railway being made on part of their land, will be considerably diminished such provisions, although inserted at the instance of the landowners, will not prevent them exercising their option under this section to require the promoters to take the whole of the house or manufactory. Such provisions are not inconsistent with this section, inasmuch as the owner not being bound to require the whole of his house or manufactory to be taken would, if he did not, thereby obtain the benefit of these provisions. Thus, a proviso that a certain portion of land should be arched over to enable the owner to have access between the severed portions of his land will not exclude this section. *Sparrow v. Oxford, &c., Railway Company*, 2 D. M. & G. 94. Nor will a proviso as to the rate of the trains, or as to whistling, when on the land. *Governors of St. Thomas's Hospital v. Charing Cross Railway Company*, 30 L. J. Ch. 395. In such a case if the promoters acquire the whole house or manufactory, they will in equity be liberated from the observance of the proviso. S. C., p. 401.

“At any time.”—The time to be regarded in deciding whether premises constitute a house, building, or manufactory within this section is the time of the giving of the notice to treat. If the lands are at that date used together for a common purpose, it is immaterial apart from *mala fides* when they came to be so used. *Richards v. Swansea Improvement Company*, 9 Ch. D. 425. It is equally immaterial if changes are afterwards made. *Chambers v. London, Chatham and Dover Railway Company*, 11 W. R. 479; and see *Treadwell v. London and South Western Railway Company*, 54 L. J. Ch. 565. Thus, if a landowner proceed to

build a house on land after receiving notice to treat for part, he cannot compel the promoters to take the whole. *Littler v. Rhyl Improvement Commissioners*, W. N. (1878) 219. Sect. 92.

Delay in requiring the whole to be taken may disentitle the landowner to an injunction. Thus, where various applications had been made to the Court for injunctions, and finally an application to restrain the promoters from taking any part without taking the whole of a manufactory, the Court refused the injunction because of the delay. *Barker v. North Staffordshire Railway Company*, 2 De G. & Sm. 55; and see *Spackman v. Great Western Railway Company*, 1 Jur. (N.S.) 790.

The words, "at any time," do not extend indefinitely to all time, and a landowner who has allowed the promoters to incur expense on the supposition that they would be allowed to take part will probably be barred from asserting his rights under this section. *Gardner v. Charing Cross Railway Company*, 2 J. & H. 248.

"A part only."—If promoters desire to take part of a house, the landowner cannot require them to take a larger portion. The option is to take all or none. To hold otherwise, would in some cases enable a landowner to retain what is valuable, and to throw upon companies what may be of little value. *Pulling v. London, Chatham and Dover Railway Company*, 33 L. J. Ch. 505.

Where a company gave notice to treat for a villa with garden, and in the same notice for a strip of the garden of the adjoining villa, and the landowner gave a counter-notice requiring the company to take the whole of both villas, and the company then elected to take neither, it was held that they could not be compelled to take the villa mentioned in the notice to treat, without the strip of the other. *Thompson v. Tottenham and Forest Gate Railway Company*, 67 L. T. (N.S.) 416.

If the promoters desire to make a tunnel under or a bridge over a house or manufactory, or merely to acquire an easement, they will nevertheless be required to take the whole. *Sparrow v. Oxford, &c., Railway Company*, 2 D. M. & G. 94; and see S. C. 9 Hare. 436; *Pinchin v. London and Blackwall Railway Company*, 5 D. M. & G. 851; *Furniss v. Midland Railway Company*, 6 Eq. 473; unless, of course, there are special provisions to the contrary in the special Act. See, for example, *Wood v. Great Eastern Railway Company*, W. N. (1885) 175.

In that case the promoters were allowed to take part of certain manufactories, provided that in the opinion of the authorities assessing the compensation the part could be severed without detriment. A warrant to a jury requiring them to assess the part only without requiring them to decide as to whether severance could be made without detriment was held irregular.

Under the provisions of 57 Geo. 3, c. xxix, commonly called *Michael Angelo Taylor's Act*, it has been held that Commissioners are entitled to take either the whole or part of a house. *Thomas v. Daw*, 2 Ch. 1; and see the cases set out in the notes to that Act, *post*. Under the provisions of the Housing of the Working Classes Act, 1890, the arbitrator has power to determine that part of a house or manufactory may be taken without material damage to the whole, in which case the owner must convey the part only. See Schedule II. (12), and section 38 (7).

"Of any House."—The word "house," has been construed to have a wide signification. It means not only a house in its ordinary sense but also in the legal sense, including the house, garden, curtilage, and

Sect. 92. all that is necessary to the enjoyment of the house. *Grosvenor v. Hampstead Junction Railway Company*, 26 L. J. Ch. 731; *Richards v. Swansea Improvement and Tramway Company*, 9 Ch. D. 425.

It is not confined to a building used wholly or almost wholly for residential purposes, but would include business premises; a house includes a shop or may consist of a shop, it would include a large inn or anything of that kind which was built for one purpose. *Richards v. Swansea Improvement Company*, 9 Ch. D. 425.

In deciding whether premises constitute one house within this section, the structure and the use should be regarded. If the parts are enclosed in one ambit with internal communications, they may structurally be considered as one house according to its legal meaning, and if a business is carried on, and it is carried on under one management, with one course of user, that is sufficient. S. C.

The following cases have been decided as to whether premises are or are not part of a "house," so that promoters could not take them without taking the whole if the owner so require:—

Where the land proposed to be taken consisted of a yard, a summer-house, and part of a garden all attached to a house, and a small portion of the garden of an adjoining house both houses were required to be taken. *Cole v. West London and Crystal Palace Railway Company*, 28 L. J. Ch. 767.

Where a house and garden were surrounded by a high wall, and a gateway opened from the garden into a paddock surrounded by an ornamental hedge, and the back road to the house was from the public road, along a road in the paddock to the gateway, the paddock was held to be part of the curtilage of the house, and a railway company wishing to take part of the paddock must take the house also. *Barnes v. Southsea Railway Company*, 27 Ch. D. 536.

Land held with a house does not necessarily pass under the word "house," unless it is part of the curtilage and connected with the house; if it is necessary to the enjoyment of the house, and forms part of that which is necessarily held and occupied with the house, it is included in the word "house," but this is subject to some qualification as everything within the circuit of a park wall of great extent would not be included. Where the surrounding wall contained about an acre and a half of land, which was used in part for a garden and orchard, and the connection between the stables and the house was through the orchard, it was held that a railway company could not take part of the orchard without taking the house, gardens and stable. *King v. Wycombe Railway Company*, 29 L. J. Ch. 462.

Fields adjoining the gardens of a house, used occasionally for pleasure but usually for pasturing cows, although connected by gravel paths with the gardens, and having in the corner of one a coachman's house, are not part of the house within the meaning of this section. *Pulling v. London, Chatham and Dover Railway Company*, 33 L. J. Ch. 505. Nor is a field which the owner of a house has bought on the other side of the road and some little distance off, for the purpose of feeding horses and cows, requisite for his establishment. "House" does not include land which is not necessary for the convenient use and occupation of the house, but only for the personal use of the owner and occupier. *Steele v. Midland Railway Company*, 1 Ch. 275. On the same principle gardens and stables to a house acquired subsequently to the house, and on the opposite side of a road, were held not to be included in the word house. *Kerford v. Seacombe, &c., Railway Company*, 57 L. J. Ch. 270. A small field or strip of land on the side of the road opposite to a house, sub-let

for grazing, is not part of the curtilage, although let with the house and improving the view. *Fergusson v. London, Brighton and South Coast Railway Company*, 11 W. R. 1088. Where connected with a house are a shubbery, and a number of gardens separated by walls, but all connected by doors and gravel walks, each garden forms part of the curtilage. *Henson v. London and South Western Railway Company*, 8 W. R. 467.

Land belonging to trustees of almshouses and lying between these almshouses and a road, and intended at some future time to be used for erecting an additional wing to the houses, was held to be part of the curtilage of the almshouses, which were contained in one building, and it was declared that a railway company could not take this land without taking the alms-houses. *Grosvenor v. Hampstead Junction Railway Company*, 26 L. J. Ch. 731.

Where houses were in course of erection and were covered in, but upon the belief that they would be taken by a company were not completed, and the company proposed to take some of the land intended as gardens for these houses, they were required to take the whole, the unfinished buildings being held to be houses. *Alexander v. Crystal Palace Railway Company*, 30 Beav. 556.

A vacant piece of ground between the road and a public house, not fenced either from the house or the street and used as the only means of approach for vehicles to the front door was held to be part of the curtilage of the house, and could not be taken without the house. *Marson v. London, Chatham and Dover Railway Company*, 6 Eq. 101.

Where attached to a dwelling-house were ornamental grounds, and within the same walls, greenhouses, and some other land in all 2½ acres, the greenhouses and some of the land being used for business purposes as a nursery garden, and a railway company proposed to take the greenhouses, fernery and lawn, it was held that they were taking part of the ornamental grounds which were adjuncts to the house, and must take the whole. *Salter v. Metropolitan District Railway Company*, 9 Eq. 432.

Where a cottage in a nursery garden was taken, it was held not to be necessary to take the whole garden, the garden being considered a field, and not an adjunct to the house. *Falkner v. Somerset and Dorset Railway Company*, 16 Eq. 458.

Premises used for one purpose.—Where the owner of premises used part as a dwelling-house, and the buildings behind which were connected by yards, as a candle manufactory and candle store, bread store and provision store, the whole block, being within one ambit, was held to constitute one "house" within the meaning of this section. *Richards v. Swansea Improvement Railway Company*, 9 Ch. D. 425.

On the same principle where premises on a main street were used as a shop for furniture dealing, and in the rear and adjoining were show-rooms, a warehouse and stable yard used in connection with the same business, it was held that the owner could require promoters who wished to take the warehouse and stable, to take the whole. *Siegenberg v. Metropolitan District Railway Company*, 49 L. T. (N.S.) 554.

Where premises within one ambit, although not structurally connected, are used for one purpose, as for a hospital, the promoters can be restrained from taking any part without taking the whole. *Governors of St. Thomas's Hospital v. Charing Cross Railway Company*, 30 L. J. Ch. 395.

Two villas with separate gardens, and separately leased and occupied, but forming one building and so built that the partition between the two

Sect. 92. was incomplete, and so that one could not be pulled down without rendering the other uninhabitable were, nevertheless, held to be two houses, and a railway could take one without the other. *Harvie v. South Devon Railway Company*, 32 L. T. (N.S.) 1.

Where the owner of a leasehold house and garden had contracted for the lease of an adjoining field, on the expiration of the current lease of that field, with a view of including it in the garden, a railway company were held to be entitled to take part of the field without taking the house and garden, as the field had not at the date of the notice to treat become part of the curtilage. *Chambers v. London, Chatham and Dover Railway Company*, 11 W. R. 479.

"Or other Building."—The word "building" was put in to extend the provision of the section to other erections which might not fall within the description of the word house. *Grosvenor v. Hampstead Junction Railway Company*, 26 L. J. Ch. 731, p. 737. There may be a building which could not be said either in the legal or ordinary sense to be a house, and that word was added to include something not necessarily included in the word "house." *Richards v. Swansea Improvement Company*, 9 Ch. D. 425, p. 437. Incomplete houses, if covered in, are treated as houses, and not as buildings merely, but if they have fallen into ruins, they would probably be buildings. *Alexander v. Crystal Palace Railway Company*, 30 Beav. 556.

"Or Manufactory."—A manufactory may be a house or it may be a building, but it may also be something more. It may be more than one house, or more than one building, or it may consist of neither but only of land used for manufacturing purposes. If the main use of the premises is for manufacturing purposes, they would appear to be properly called a manufactory, although part may be used for selling purposes, and the articles manufactured be different from those sold, provided the businesses are carried on, as a whole, by one person with one body of servants, and with one capital. *Richards v. Swansea Improvement Company*, 9 Ch. D. 425, per BRETT, L.J., pp. 434—436.

If, however, the main business is not manufacturing but if incidental to the business some manufacturing is carried on, such as the making of packing cases, which is not part of the business, but merely something added to it, and if the building in which such manufacture is carried on be required to be taken, the owner cannot require the promoters to take adjoining premises on which the main business is carried on. *Benington v. Metropolitan Board of Works*, 54 L. T. (N.S.) 837. Similarly, if incidental to the main business which is not manufacturing, some manufacturing is carried on, and part of the property on which the main business is carried on is taken, the promoters cannot be required to take the whole as being a manufactory. Thus, where the business was that of a dust contractor, and it was proposed to take the "tot shop," or sorting house, the promoters were not required to take other premises where some of the material was converted into manure. *Reddin v. Metropolitan Board of Works*, 4 De G. F. & J. 632.

Wholesale dealers in tea, who store, blend, and mill the tea and pack it, are not manufacturers, and their business premises are not a manufactory within this section. *Benington v. Metropolitan Board of Works*, 54 L. T. (N.S.) 837.

If the main business which is carried on is manufacturing, land within the same wall used in connection therewith, as, for example, for the deposit of rubbish and ashes is part of the same manufactory,

although no manufacturing is carried on upon that part. *Sparrow v. Sect. 92. Oxford Railway Company*, 2 D. M. & G. 94.

The same principle applies even if the parcels of land are separated by a road; thus where cottages on the opposite side of the road from the place where the actual manufacturing was done were used as warehouses, and were the only warehouses, they were regarded as part of the manufactory, and an injunction granted restraining the promoters from taking them without taking the whole manufactory. *Spackman v. Great Western Railway Company*, 1 Jur. (N.S.) 790.

Where a manufactory was in part worked by water power, and had a reservoir supplied by a goit, into which water was turned out of a natural river, there being a weir, shuttles for regulating the flow of water into the goit, and a mill house for a man to look after the shuttles, a company desiring to take the weir, shuttles, millhouse, and part of the river bed, was restrained from doing so without taking the whole manufactory. *Furniss v. Midland Railway Company*, 6 Eq. 473.

In taking a manufactory, the promoters are required to take all the fixtures whether or not they are tenant's fixtures removable by the lessee. *Gibson v. Hammersmith Railway Company*, 32 L. J. Ch. 337.

Procedure.—When a landowner receives a notice to treat for part of a house, building, or manufactory, he should, if he so desire, serve a counter-notice requiring the promoters to take the whole. It is advisable that the counter-notice be sent within 21 days, although this is not necessary. If the premises constitute a house, building, or other manufactory within this section, then the promoters may elect either to abandon the notice to treat, paying any damage thereby occasioned, or to take the whole. *King v. Wycombe Railway Company*, 29 L. J. Ch. 462; *R. v. London and South Western Railway Company*, 12 Q. B. 775, and as to what amounts to election and generally, see section 18, note "By counter-notice," ante, p. 47.

Form of Counter-notice.—There is no special form of counter-notice required. A verbal counter-notice followed by a suit to restrain the promoters taking part only has been held sufficient (*Binney v. Hammersmith Railway Company*, 8 L. T. (N.S.) 161), and where after informal conversations between the solicitors to the parties as to taking the whole, the promoters proceeded to enter upon part, whereupon the landowner filed a bill to restrain them from taking the part without taking the whole, the filing of the bill was held to be sufficient notice that the landowner required them to take the whole and an injunction was granted. *Spackman v. Great Western Railway Company*, 1 Jur. (N.S.) 790.

If a landowner, on receipt of the notice to treat, reply that he requires the promoters to pay him a certain sum for the land they propose to take, and that if they cannot accede to this that he will require them to take the whole, this will be a valid counter-notice, and they will not be entitled to proceed to take the part only. *Gardner v. Charing Cross Railway Company*, 2 J. & H. 248.

The landowner is not bound to state in his notice requiring the whole premises to be taken, that they constitute a house, a building, or a manufactory, and apparently if he describes them as a "manufactory" and the Court are of opinion that they constitute a house, the counter-notice will not be thereby invalid. *Richards v. Swansea Improvement Company*, 9 Ch. D. 425.

Sect. 92. *Enforcing Counter-notice.*—If the promoters disregard the counter-notice the landowner may bring an action for an injunction to restrain the company from taking proceedings to assess the amount of the compensation for part and from entering upon or taking any other proceedings for the purpose of obtaining possession of the land comprised in the notice to treat (see *Barnes v. Southsea Railway Company*, 27 Ch. D. 536), and for a declaration that he ought not to be compelled to sell the part of his house, building, or manufactory mentioned in the notice to treat, and that he ought not to be compelled to sell any other part. *Richards v. Swansea Improvement, &c., Company*, 9 Ch. D. 425. If the promoters have entered, an injunction to restrain their further proceedings should be asked for, together with a declaration that they shall take the whole, the entrance being considered an election to take the whole. *King v. Wycombe Railway Company*, 29 L. J. Ch. 462. An enquiry in such a case will usually be ordered as to whether the landowner can make a good title. *Sparrow v. Oxford Railway Company*, 2 D. M. & G. 94. See form of order, 3 Seton, 5th edit., p. 2008.

When a railway company had taken possession of part and a declaration had been made that they were bound to take the whole if a good title could be made, and after the title had been found good they did not take possession of the whole or take any further proceedings, it was ordered, on further consideration, that they should take all necessary steps to assess the value and that they should pay the money within one month after the value had been assessed, and that a conveyance be executed. The order contained a declaration of the landowner's lien, with liberty to apply to enforce that lien. JAMES, V.C., said he would grant a mandatory injunction if the company persevered in their resistance. *Mason v. London, Chatham and Dover Railway Company*, 7 Eq. 546, and see form of order, p. 549, which was followed in *Falkner v. Somerset and Dorset Railway Company*, 16 Eq. 458.

If the counter-notice is invalid by reason of the premises not forming a house or manufactory, the promoters will be entitled to proceed on their original notice to treat and to disregard the counter-notice. *Loosemore v. Tiverton, &c., Railway Company*, 22 Ch. D. 25; 9 A. C. 480; *Harvie v. South Devon Railway Company*, 32 L. T. (N.S.) 1.

In a case where the solicitors of a company accepted a counter-notice as valid, but before the premises had been assessed they discovered that the premises did not constitute one house, and the Court agreed with them, it was held that the acceptance by the solicitors did not bind the company. *Treadwell v. London and South Western Railway Company*, 54 L. J. Ch. 565.

And with respect to small portions of intersected land, be it enacted as follows : (a)

Owners
of inter-
sected
lands may
insist on
sale.

93. If any lands, not being situate in a town or built upon, shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land

required for the purposes of the special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown, so as to be conveniently occupied therewith; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by selling the same in a sufficient and workmanlike manner. Sect. 88.

(e) Sections 93 and 94.

"Not being situate in a Town or Built upon."—As to buildings, see section 92, *ante*, p. 242.

As to what is meant by "situate in a town," see note to section 128, *post*. A market garden with a cottage on it is not land built upon, and if the cottage is taken the garden need not be taken, but if the garden is severed, the severed portion, if less than half an acre, must be taken if required. *Falkner v. Somerset and Dorset Railway Company*, 16 Eq. 458.

"Shall purchase the same."—If the value of this additional land is to be assessed with the land taken, care must be exercised by both parties that it is included in the submission or warrant to the sheriff, otherwise the assessment may be void. *North Staffordshire Railway Company v. Wood*, 2 Ex. 244.

94. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special Act, or any Act incorporated therewith, compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land, and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascer-

Promoters of the undertaking may insist on purchase where expense of bridges, &c., exceeds the value.

Sect. 94. taining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication.

"If any such Land."—The House of Lords, after taking the opinion of the judges, have decided that the word "such" in this section does not refer to "lands not being situate in a town or built upon," mentioned in section 93, but to the heading of these two sections—"small portions of intersected land." Promoters of an undertaking may, therefore, take advantage of this section when the intersected land is within a town or built upon, and compel the sale of the severed land if less than half an acre, or of less value than the expense of making the necessary communications. *Eastern Counties, &c., Railway Companies v. Marriage*, 9 H. L. Cas. 32, and see *Falls v. Belfast and Ballymena Railway Company*, 12 Ir. L. R. 233, to same effect.

"A Bridge, Culvert, or other such Communication."—In the case of railway companies this section should be read with section 68 of the Railways Clauses Act, 1845, which requires them to provide accommodation works for making good any interruptions caused by the railway to the use of the land. In an Irish case it was held, where part of land was taken, from which an owner had access to the sea for bathing, fishing and shooting, the land being severed and the access from the residence on the land to the sea being cut off, that the company were bound to make the accommodation works under section 68 of that Act and could not exercise their power of buying the lands under this section, as the works were not merely to connect the severed lands, but to make good the interruption to the use of the land. *Falls v. Belfast, &c., Railway Company*, 12 Ir. L. R. 223.

"As herein provided for cases of disputed Compensation."—See these provisions summarised in the notes to section 21, *ante*, p. 52. The methods provided are by justices (sections 22—24), arbitrators (sections 25—37), jury (sections 38—57), surveyors (sections 59—63).

Costs of the Inquiry.—Although this section directs that the inquiry as to value shall be ascertained as herein provided for cases of disputed compensation, it does not make any provisions as to costs and does not thereby include sections 34 or 51. Costs cannot be given unless an intention is clearly implied, and as no previous offer by the promoters would save an inquiry, the provisions of sections 34 and 51 cannot be deemed to be implied as they give the landowner costs only when the sum awarded exceeds the amount offered. If, therefore, the promoters make no offer the landowner is not entitled to costs. *Cobb v. Mid Wales Railway Company*, L. R. 1 Q. B. 342.

As to the power of the arbitrator to award costs, see the Arbitration Act, 1889, section 2, Sched. I. (i), *post*.

And with respect to copyhold lands, be it enacted as Sect. 95. follows : (a)

95. Every conveyance^(b) to the promoters of the under-
taking of any lands which shall be of copyhold or customary
tenure, or of the nature thereof, shall be entered on the rolls
of the manor of which the same shall be held or parcel ; and
on payment to the steward of such manor of such fees as
would be due to him on the surrender of the same lands to
the use of a purchaser thereof he shall make such enrolment ;
and every such conveyance, when so enrolled, shall have the
like effect in respect of such copyhold or customary lands, as
if the same had been of freehold tenure, nevertheless, until
such lands shall have been enfranchised by virtue of the
powers hereinafter contained,^(c) they shall continue subject
to the same fines, rents, heriots, and services as were thereto-
fore payable and of right accustomed.

Convey-
ance of
copyhold
lands to be
enrolled.

(a) Sections 95—98.

(b) As to the forms of conveyance, see section 92.

(c) See sections 96 and 97.

“**Shall be entered on the Rolls.**”—If a tenant convey his copy-
hold lands to a company under their special Act, he will convey no
more than he has, so that the lord's rights are in no way affected ;
therefore, if the conveyance is not enrolled, the lord will be entitled to
seize the land on the death of the tenant. Until enrolment, the tenant
and his heir hold the land as trustees for the company. *Dimes v.*
Grand Junction Canal Company, 9 Q. B. 426, and S. C. in Chancery, 2
Jur. 886 and 1077.

Where the manor had been leased by the lord and the company
purchased from the lessee, the reversioners were allowed to eject the
company, but reasonable compensation was assessed by the Court.
Beaufort v. Patrick, 17 Beav. 60, a case under a special Act.

“**Such fees as would be due to him on the surrender.**”—The
steward is only entitled to the fee on the surrender, and, although by
the custom of the manor he may be entitled to a fee on admittance by a
tenant, he will not be entitled to it under this Act. *Cooper v. Norfolk*
Railway Company, 3 Ex. 546.

“**They shall continue subject to the same fines.**”—By section 96,
the promoters who take copyhold land are required to enfranchise
within three months after enrolment or within one month of entry,
but if there is any delay in so doing, then the lord of the manor is
entitled to the fines, rents, heriots, and services as if the company had
not done so, and these fines are to be assessed according to the improved
annual value of the land, although the compensation is assessable on

Sect. 95. the unimproved value. *Lowther v. Caledonian Railway Company* [1892], 1 Ch. 73, and see note to next section.

It is not intended, however, that where the promoters enrol the conveyance that they should have to pay the customary fine for admittance to copyholds to the lord. *Ecclesiastical Commissioners v. London and South Western Railway Company*, 14 C. B. 743.

Copyhold
lands to
be enfran-
chised.

96. Within three months after the enrolment of the conveyance of any such copyhold or customary lands, (a) or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, (b) whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement the same shall be determined as in other cases of disputed compensation; (c) and in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for.

(a) That is the enrolment under section 95.

(b) That is under section 85.

(c) See these set out in note to section 21, *ante*, p. 52.

The construction of sections 95—97 was fully discussed in *Lowther v. Caledonian Railway Company* [1892], 1 Ch. 73, by the Court of Appeal. The effect of section 96 is to cast a duty upon promoters to procure enfranchisement, and on the lord to enfranchise, upon the happening of the first of the events mentioned in the section, and either party can enforce the duty against the other. If the promoters do not proceed the landowner can obtain a *mandamus* to compel them. The rights of the parties are settled from the date when the first of the two events occurs, and that is the period at which the value of the lord's interest in the land ought to be taken. Therefore, if there is delay in assessing

the compensation payable to the landlord, it must be assessed as at the date of the happening of the first of the two events, and without regard to the subsequent improvements made by the promoters. The loss "by the enfranchisement of the same" mentioned in this section means the loss by the creation of the right to enfranchisement on the one side and of the obligation to enfranchise on the other. The provision that within three months of enrolment or one month of entry the promoters shall procure enfranchisement means that they shall take all proper steps to procure the enfranchisement, as provided by this and the next section. *JESSEL, M.R.*, had laid down the same principle in *In re Marquis of Salisbury*, December, 1879. See report thereof in note to above case [1891], 1 Ch. p. 75, and *W. N.* (1879), 214. The fines in the meantime are payable on the improved value. See section 95. Sect. 96.

In determining the compensation for the loss caused "by the enfranchisement," the amount of a fine for the surrender and admittance of the promoters is not to be included. *Ecclesiastical Commissioners v. London and South Western Railway Company*, 14 C. B. 743. And if such a fine is paid to a tenant for life it is to be treated as capital money. *Re Wilson's Estate*, 2 J. & H. 619.

Promoters under this Act are not affected by the Copyhold Acts allowing compulsory enfranchisement; their position is wholly distinct from that of a copyholder. *Re Wilson's Estate*, 2 J. & H. 619; *In re Marquis of Salisbury*, *W. N.* (1879), 214.

Landowners and tenants for life under section 4 of the Settled Land Act may, no doubt, agree with the promoters to enfranchise pursuant to the Copyhold Act, 1894, if such an agreement be desirable, as the compensation is only to be assessed under this Act if the parties do not agree. Cf., *In re Marquis of Salisbury*, *W. N.* (1879), 214. For the method of determining the compensation for enfranchisement in such a case, see sections 5—10, of the Copyhold Act, 1894, which repeals and consolidates the previous Copyhold Acts.

97. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common soccage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as Lord of the manor to enfranchise on payment of compensation.

Sect. 97. aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common soccage.

Deposit in the Bank.—See sections 69, 71, 73 for the case of persons under disability; section 76 on failure to convey or make a good title.

"Shall enfranchise such lands."—This means presumably that a deed of enfranchisement is to be executed by the lord and not till then, unless the promoters execute a deed poll, are the lands completely enfranchised. *Louther v. Caledonian Railway Company* [1892], 1 Ch. 73, 81.

In such a deed the lord is apparently not bound in strictness to give any acknowledgment as to the right of the promoters to the production of the title deeds and of the court rolls; but, at the most, the promoters are not entitled to more than an acknowledgment by the lord and his trustee of their right to the production of such title deeds and of the court rolls as affect the land enfranchised, and to the delivery of copies and an undertaking by the lord alone for safe custody. *In re Agg-Gardner*, 25 Ch. D. 600.

"To execute a deed poll."—As to this, see section 75.

Appor-
tionment
of copy-
hold rents.

98. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special Act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices; and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special Act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents, and with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been

assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents. **Sect. 98.**

By two justices.—See the definition and note to section 3, *ante*, p. 6.

See also section 24 which provides for procedure in cases of disputed compensation, which, apparently, does not include questions of apportionment, *ante*, p. 59.

And with respect to any such lands, being common or waste lands, be it enacted as follows : (a)

99. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil ; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled other than his right in the soil of such lands, shall be determined, and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the commoners ; and upon payment or deposit in the bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

Compensation for common lands, where held of a manor, &c., how to be paid.

(a) Sections 99—107.

Section 100 deals with the procedure to acquire the lord's rights. Sections 101—107 deal with the ascertaining the compensation payable to the commoners and the means of acquiring their rights.

An allotment of part of the waste to trustees for the purpose of allowing certain occupiers to cut turves does not take away the lord's right in the soil. *Attorney-General v. Meyrick* [1893], 1 A. C. 1, and see note to section 104, *post*, p. 254.

100. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, such lord of the manor or such other party as aforesaid, shall convey (a) such lands to the promoters of the undertaking, and such conveyance shall have the effect of

Lord of the manor, &c., to convey to the promoters of the undertaking on receiving compensation for his interest.

Sect. 100. vesting such lands in the promoters of the undertaking in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance; and in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, *(b)* duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof; subject, nevertheless, to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided. *(c)*.

As to ascertaining the compensation payable to the lord, the general law hereinbefore provided is to be followed.

(a) Sections 81—83.

(b) Section 75.

(c) Sections 104—107.

“Subject nevertheless to the Commonable and other Rights.”

—A company taking the wastes of a manor with rights of common over the waste, in order to get full and entire property and possession, must settle not only with the lord as owner of the soil, but with the commoners, who have rights of common over the wastes. Until they have settled with the commoners as well as the lord, or taken steps under section 107 by paying the deposit into the bank, they cannot take possession. Therefore, if a railway company, after obtaining a conveyance from the lord, enter and construct their railway on the common without first having paid compensation to the commoners, a commoner may maintain an action for the disturbance of his right. On the conveyance from the landlord the company stand in the place of the lord, and the payment of the valuation either to the commoners or into the bank is a condition precedent to their right to disturb the commoners. *Stoneham v. London and Brighton Railway Company*, L. R. 7 Q. B. 1.

Compensation for common lands where not held of a

101. The compensation to be paid with respect to any such lands being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and

other rights in or over common lands the right in the soil **Sect. 101.** whereof shall not belong to the commoners, other than the compensation to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned. manor how to be ascertained.

“**Shall be determined by agreement.**”—This must be subject to section 105, which provides that in the event of disagreement disputes shall be settled as in other cases of disputed compensation.

This section deals with two possible cases of ownership of the soil other than that of the lord: one in which a person, not being lord of the manor, still holds land subject to a commonable right, the other where the soil would be subject to the commoners. *Nash v. Coombs*, 6 Eq. 51, p. 56.

This section and the following are not imperative, so as to exclude agreements entered into otherwise than as mentioned in these sections. Thus, where the householders of a borough owned land in common, and at a meeting appointed their chairman to negotiate with the company, the agreement entered into by him was held valid, and specific performance decreed. *Bee v. Stafford and Uttoxeter Railway Company*, 23 W. R. 868.

102. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if there be no such church some other place in the A meeting of the parties interested to be convened.

Sect. 102. neighbourhood to which notices are usually affixed ; and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor.

Meeting to appoint a committee. **103.** It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights ; and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

Committee to agree with the promoters of the undertaking. **104.** It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein ; and all such parties shall be bound by such agreement ; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation, shall be an effectual discharge for the same ; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interests, but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or non-application thereof.

"Shall be apportioned by the Committee."—By the Inclosure Acts, 1852 and 1854, the power of apportioning and otherwise dealing with such money are conferred on this committee and upon the Inclosure Commissioners. As these powers have not been found in practice to be sufficient, further powers of applying the money have been conferred by the Commonable Rights Compensation Act, 1882. Such parts of these Acts as are relevant to this subject will be found set out in full hereafter.

"The several Persons interested."—The committee may go to Court to have the matter settled as to the manner in which the money is to be divided.

In one case, where there were bye-laws regulating the number of

estate which the freeholders and copyholders and the occupiers of freehold and copyhold land might respectively turn on to the common, the Court ordered the money to be divided between the freeholders and copyholders in shares, according to the bye-laws. *Fox v. Amhurst*, 20 Eq. 403. Sect. 104.

The occupiers who were not represented in that suit brought an action to obtain their share, but it was held that they had no right of common, independently of their landlords, and, therefore, had no claim on the fund. *Amst v. Amhurst*, 7 Ch. D. 689.

Where resident freemen of a borough had the right annually of turning one head of stock on to lands, held by the corporation as trustees, and could transfer this right as long as they resided, it was held that they were not entitled to the money paid for the fee although they claimed to be the only persons interested, inasmuch as the land was held in trust for the resident freemen of all time; the Court made an order declaring that the money ought to be re-invested in lands to be held on the same trusts as those taken were held, and in the meantime ordering the money to be invested and the dividends paid to the trustees, to be divided by them amongst such resident freemen at the same time or times as such freemen have been accustomed in each year to enter upon the enjoyment of their rights of common. *Nash v. Coombs*, 6 Eq. 51.

Where land had been allotted under statute unto the lord of the manor in trust for the occupiers of cottages for supplying turves for fuel for the use of such cottages, other parts being allotted to owners in severalty in compensation for their rights, and a railway company took part of the land allotted for the occupiers of the cottages, it was held that the freeholders of the cottages had no claim upon the purchase money, but that the lord of the manor had an interest in the soil, and that he was entitled to such part of the money as represented the value of the soil, and that the remainder was to be held as a charitable trust for the benefit of the occupiers of the cottages. *In re Christchurch Enclosure Act*, 38 Ch. D. 520, affirmed as regards the lord having an interest in the soil in *Attorney-General v. Meyrick* (1893), A. C. 1; the other points not being appealed.

On an enquiry as to the apportionment of a fund between the corporation of a borough and the freemen, on the application of the corporation, the Court refused to proceed until the freemen were represented at the hearing. *Ex parte Mayor of Lincoln*, 21 L. J. Ch. 621.

If an enquiry is ordered and a number of commoners claim, each person whose claim is allowed will be allowed three guineas costs for proving the same, although the amounts received by them are very small. *Waterton v. Burt*, 39 L. J. Ch. 425, citing *March v. Alexander*, June, 1861; *cor. Wood*, V.C., not reported, and to same effect.

105. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation. Disputes to be settled as in other cases.

As in other cases.—I.e., by justices, section 22; by arbitration, sections 23, 25—34; by jury, sections 35—57.

Sect. 106. **106.** If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found.

If no committee be appointed, the amount to be determined by a surveyor.

"Parties who cannot be found."—See sections 59—63, *ante*, p. 108. It is not clear whether, if an effectual meeting is afterwards convened, the amount can be referred to arbitration pursuant to sections 64—67, *ante*, p. 121, if the committee are dissatisfied with the amount assessed by the surveyor.

Upon payment of compensation payable to commoners the lands to vest.

107. Upon payment or tender to such committee, or any three of them, or if there shall be no such committee then upon deposit in the bank(*a*) in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided(*a*) in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery [in England or the Court of *Exchequer* in Ireland],(*b*) by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested as it shall think fit.

(*a*) Sections 69, 75, 106.

(*b*) These words are repealed by the Statute Law Revision Act, 1892.

Made upon Petition.—The order will now in cases where the amount is under 1,000*l.* be made upon summons. See Order 55, rule 2; and see the procedure fully discussed in the notes to section 70, *ante*, p. 168.

"For the benefit of the parties interested."—That means according to their several rights and respective interests in having an invest-

ment of it, the Court dealing with it in that way. Per PAGE-WOOD, V.C., Sect. 107.
in *Nash v. Coombes*, 6 Eq. 51, p. 58.

As to the different interests, see note to section 104, *ante*, p. 254.

And with respect to lands subject to mortgage, be it enacted as follows : (a)

108. It shall be lawful for the promoters of the under-^{Power} taking to purchase or redeem the interest of the mortgagee of ^{to redeem} any such lands which may be required for the purposes of the special Act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the special Act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice ; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the

Sect. 108. lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

(a) Sections 108—114.

The above section must be read subject to the proviso contained in section 114, that the mortgagee is entitled to compensation and costs of re-investment if the payment is made before the time limited for payment off.

“To purchase the interest of the Mortgagee.”—The promoters may deal with the mortgagor and arrange with him to settle with the mortgagees, but if they know there is a mortgage and neglect communications with the mortgagees, they may be restrained from proceeding with their works until the value of the mortgagees’ interest had been ascertained and paid or secured. *Ranken v. East and West India Docks*, 12 Beav. 298 ; and see *Martin v. London, Chatham and Dover Railway Company*, 1 Ch. 501. Under the agreement with the mortgagor they may take possession but they may not commit waste until the mortgage has been discharged, and if the mortgagor has agreed to settle with the mortgagee he must pay six months’ interest as provided by this section. *Spencer-Bell v. London and South Western Railway Company*, 33 W. R. 771.

“Shall convey.”—As to the forms and costs of conveyances, see sections 81—83, *ante*, pp. 116, 119.

Deposit of mortgage money on refusal to accept.

109. If, in either of the cases aforesaid upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the bank, in the manner provided by this Act in like cases, (a) the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months’ notice as aforesaid, such further interest as would at that time become due ; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them ; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

(a) See sections 69, 75, 76, 77, and notes thereto.

110. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such land, and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt so far as the same will extend, and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Sect. 110.

Sum to be paid when mortgage exceeds the value of the lands.

"The same shall be determined as in other cases."—If the procedure laid down in sections 108 and 109 is not followed, the mortgagees are entitled to a notice to treat under section 18 as parties interested. *Per CRANWORTH, L.C.*, in *Martin v. London, Chatham and Dover Railway Company*, 1 Ch. 501, pp. 505, 506; *Reg. v. Metropolitan Railway Company*, 13 L. T. (N.S.) 444, *per BLACKBURN, J.*

In the former of these cases the company had entered and had given bonds, pursuant to section 85, to the mortgagor and mortgagee. Proceedings were then taken to have the whole value of the property ascertained by an inquiry, but as it was expected that the amount assessed would exceed the value of the mortgage debt, the mortgagees were not served with any notice, and were no parties to the inquiry. The amount assessed was less than the mortgage debt. The mortgagees claimed to have their debt and costs paid out of the money in Court under section 85, and also an injunction to have the company restrained from proceeding with their works until their purchase money should be assessed and paid, and that it might be ascertained pursuant to the Lands Clauses Act. It was held (1) that the mortgagees although they had notice of the inquiry were not bound by it; (2) that they had no lien on the money in Court under section 85, as until a jury was summoned and the amount ascertained that sum was not available; (3) that they could not claim on the amount assessed. As the premises had been destroyed by the company there appeared to be a difficulty in having the value assessed under section 68, and the mortgagees were not bound to proceed thereunder. They were dealt with as if the company had purchased the equity of redemption and had the plaintiffs as their mortgagees. The usual account was, therefore, ordered to be taken, and upon the company paying the amount found due they were to have conveyed to them the mortgagees' interest, but in default the company,

Sect. 110. and if necessary the mortgagor, were ordered to execute an assignment of the property mortgaged to the mortgagee.

If the mortgagee is in possession, he will be entitled to all sums found due in respect of loss of profits and goodwill, and if he is not in possession he will be entitled to the value of the goodwill attaching to the premises. *Pile v. Pile, Ex parte Lambton*, 3 Ch. D. 36; cf. *Chisum v. Dewes*, 5 Russ. 29; *Truman v. Redgrave*, 17 Ch. D. 547.

If the mortgagor is in possession sums awarded for damage to trade and personal expenses belong to the mortgagor and not to the mortgagee. *Cooper v. Metropolitan Board of Works*, 25 Ch. D. 472; *Martin v. London, Chatham, and Dover Railway Company*, 1 Ch. 501; and see *In re the South City Market Company, Ex parte Bergin*, 13 L. R. Ir. 245, where the money was apportioned between the tenant for life, a reversioner and a mortgagee of the reversion.

Deposit
of money
when
refused on
tender.

111. If upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank, in the manner provided by this Act in like cases, (a) and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; (b) and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless, all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

(a) Section 69.

(b) Sections 75, 76, and 77.

112. If a part only of any such mortgaged lands be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; (a) and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Sect. 112.

Sum to be paid where part only of mortgaged lands taken.

(a) As to the methods of settling compensation, see section 21, note, ante, p. 52.

113. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters

Deposit of money when refused on tender.

Sect. 113. of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the bank, in the manner provided by this Act in the case of moneys required to be deposited in such bank, (a) and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon ; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them ; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof ; nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

(a) See sections 69, 75, 76, and 77.

If the value of the land is paid into Court to the account of the tenant for life, and the mortgagees are not paid off, the promoters cannot treat that money as money in Court under this section, and may be ordered to pay the costs of the attendance of the mortgagees on an application for re-investment, and the promoters cannot then insist on having these incumbrances paid off. *Ex parte Peyton's Settlement*, 4 W. R. 380.

114. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under

Compensation to be made in certain cases if mortgage

the provisions hereinbefore contained the mortgagee shall have **Sect. 114.**
 been required to accept payment of his mortgage money, or ^{paid off}
 of part thereof, at a time earlier than the time so limited, the ^{before the}
 promoters of the undertaking shall pay to such mortgagee, in ^{stipulated}
 addition to the sum which shall have been so paid off, all such ^{time.}
 costs and expenses as shall be incurred by such mortgagee in
 respect of or which shall be incidental to the re-investment
 of the sum so paid off, such costs in case of difference to be
 taxed and payment thereof enforced in the manner herein
 provided with respect to the costs of conveyances ; and if the
 rate of interest secured by such mortgage be higher than at
 the time of the same being so paid off can reasonably be
 expected to be obtained on re-investing the same, regard being
 had to the then current rate of interest, such mortgagee shall
 be entitled to receive from the promoters of the undertaking,
 in addition to the principal and interest hereinbefore provided
 for, compensation in respect of the loss to be sustained by him
 by reason of his mortgage money being so prematurely paid
 off, the amount of such compensation to be ascertained in case
 of difference, as in other cases of disputed compensation ; and
 until payment or tender of such compensation as aforesaid the
 promoters of the undertaking shall not be entitled, as against
 such mortgagee, to possession of the mortgaged lands under
 the provision hereinbefore contained.

“A time shall have been limited.”—In such a case it is not enough
 for the promoters to pay the whole value of the premises into Court.
 Even if the mortgagees are not entitled to possession, they are entitled
 to have their security maintained, and the Court will prevent the
 company from prosecuting their works until the mortgagee's interest
 under this section has been ascertained and paid or secured. *Ranken v.*
East and West India Dock, 12 Beav. 298.

And with respect to lands charged with any rent service,
 rentcharge, or chief or other rent, or other payment or
 incumbrance not hereinbefore provided for, be it enacted as
 follows :(a)

115. If any difference shall arise between the promoters ^{Release of}
 of the undertaking and the party entitled to any such charge ^{lands from}
^{rent-}
^{charges.}

Sect. 115. upon any lands required to be taken for the purposes of the special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special Act, the same shall be determined as in other cases of disputed compensation. (b)

(a) Sections 115—118.

(b) See section 21, note, *ante*, p. 52.

Where the promoters agreed with the committee of a lunatic to purchase a rentcharge for the period of the lunatic's life on houses, which they proposed to take, and the consideration was the purchase of a government annuity of like amount for his life, the Court sanctioned the agreement. *In re Brewer*, 1 Ch. D. 409.

As to tithe rentcharges, see note to section 68, *ante*, p. 140.

Release
of part of
lands from
charge.

116. If part only of the lands charged with any such rent service, rentcharge, chief or other rent, payment, or incumbrance, be required to be taken for the purposes of the special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Two Justices.—See definition, section 3, *ante*, p. 6.

Deposit in
case of
refusal to
release.

117. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation

in the bank in the manner hereinbefore provided in like Sect. 117.
 cases, (a) and also, if they think fit, to execute a deed poll,
 duly stamped, in the manner hereinbefore provided in the case
 of the purchase of lands by them, and thereupon the rent
 service, rentcharge, chief or other rent, payment, or incum-
 brance, or the portion thereof in respect whereof such
 compensation shall so have been paid, shall cease and be
 extinguished.

(a) Sections 69, 75, 76, and 77.

118. If any such lands be so released from any such Charge to
continue
on lands
not taken.
 charge or incumbrance, or portion thereof, to which they
 were subject jointly with other lands, such last-mentioned
 lands shall alone be charged with the whole of such charge,
 or with the remainder thereof, as the case may be, and the
 party entitled to the charge shall have all the same rights and
 remedies over such last-mentioned lands, for the whole or for
 the remainder of the charge, as the case may be, as he had
 previously over the whole of the lands subject to such charge ;
 and if upon any such charge or portion of charge being so
 released the deed or instrument creating or transferring such
 charge be tendered to the promoters of the undertaking for
 the purpose, they or two of them shall subscribe, or if they be
 a corporation shall affix their common seal to a memorandum
 of such release endorsed on such deed or instrument, declaring
 what part of the lands originally subject to such charge shall
 have been purchased by virtue of the special Act, and if the
 lands be released from part of such charge, what proportion of
 such charge shall have been released, and how much thereof
 continues payable, or if the lands so required shall have been
 released from the whole of such charge, then that the remain-
 ing lands are thenceforward to remain exclusively charged
 therewith : and such memorandum shall be made and executed
 at the expense of the promoters of the undertaking, and shall
 be evidence in all courts and elsewhere of the facts therein
 stated, but not so as to exclude any other evidence of the
 same facts.

Sect. 119. And with respect to lands subject to leases, be it enacted as follows : (a)

Where
part only
of lands
under lease
taken, the
rent to
be appor-
tioned.

119. If any lands shall be comprised in a lease, for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands ; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices ; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act ; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease ; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special Act, in the same manner as they would have done in case such part only of the land had been included in the lease.

(a) Sections 119—122, and see also section 74. The sections under this heading are intended to provide altogether for compensation in the cases specially provided for ; being specific provisions not affected by the other sections. *Syers v. Metropolitan Board of Works*, 36 L. T. (N.S.) 277. Special Acts excepting such parts of the Lands Clauses Consolidation Act, as relate to the purchase and taking of lands otherwise than by agreement do not thereby except these sections. *Reg. v. Mayor of London*, L. R. 2 Q. B. 292 ; *Wilkins v. Mayor of Birmingham*, 25 Ch. D. 78.

“The Rent . . . shall be apportioned.”—This is not within the power of the arbitrator who assesses the compensation ; it must be effected under the provisions of this section. *In re Ware*, 7 R. Ca. 780.

If the promoters agree to purchase the lessee's rights and to have the rents apportioned if necessary under the Act, specific performance of the

agreement will be decreed against the promoters, but it does not appear **Sect. 119.**
 necessary that the lessor should be served with a notice to treat for his
 interest, before the apportionment can be made. *Williams v. East London*
Railway Company, 18 W. R. 159.

The lessee has no power to compel the lessor to apportion the rent.
 The promoters are the persons enabled to call upon the lessor and lessee
 to come before the justices in order that they may be bound with
 respect to the amount of the apportionment. It is, therefore, no answer
 to a suit for specific performance of an agreement brought by the lessee
 to compel the promoters to purchase his land, that the apportionment of
 the rent had not been agreed upon. *Slipper v. Tottenham, &c., Railway*
Company, 4 Eq. 112.

The costs of having the rent apportioned by justices or otherwise
 are costs incidental to the taking and purchase of land under section 80,
 and are payable by the promoters, at least if the money has been paid
 into Court (*Ex parte Flower*, 1 Ch. 599); but are not costs payable under
 section 82. *Ex parte Buck*, 33 L. J. Ch. 79.

The date when the apportioned rent becomes payable by the tenant
 would appear to be the date of the apportionment, although the premises
 are not taken for some time afterwards. *Ball v. Graves*, 18 L. R. Ir. 224,
 a decision on the Railways (Ireland) Act, 1860.

"The lessor shall have all the same rights."—He has, however,
 it would appear, no lien on the money paid to the tenant as compensation,
 either for arrears of rent accrued due before the land was taken, or since.
Ex parte Carey, 10 L. T. (o.s.) 37, an Irish case.

120. Every such lessee as last aforesaid shall be entitled **Tenants to**
 to receive from the promoters of the undertaking compensa- **be com-**
 tion for the damage done to him in his tenancy by reason of **pensated.**
 the severance of the lands required from those not required,
 or otherwise, by reason of the execution of the works.

For the principles of compensation as to severance, see notes to
 section 63, *ante*, p. 117.

121. If any such lands shall be in the possession of any **Compensation to**
 person having no greater interest therein than as tenant for a **be made to**
 year or from year to year, and if such person be required to **tenants at**
 give up possession of any lands so occupied by him before the **will, &c.**
 expiration of his term or interest therein, he shall be entitled
 to compensation for the value of his unexpired term or
 interest in such lands, and for any just allowance which
 ought to be made to him by an incoming tenant, and for any
 loss or injury he may sustain, or if a part only of such lands
 be required, compensation for the damage done to him in his
 tenancy by severing the lands held by him, or otherwise

Sect. 121. injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special Act.

"Any such lands."—These are the lands subject to leases referred to in the heading to these sections. See note thereto, *ante*, p. 266.

"No greater interest therein than as tenant for a year."—This is meant to comprehend every species of interest for less than a year in duration. It, therefore, includes the interest of a tenant in possession under a longer term than for a year if at the time when possession of the land is required the residue of the term has less than a year to run. Tenants in such a position ought not to require the compensation to be settled by arbitration under section 68, but by justices under this section. *Reg. v. Great Northern Railway Company*, 2 Q. B. D. 151.

A schoolmaster in possession of a school-house, who could be removed by two-thirds of the governors giving three months' notice, has an interest in the house not greater than as tenant for a year or from year to year. *Reg. v. Manchester, &c., Railway Company*, 4 E. & B. 88.

A person in possession under a written agreement for more than three years, being a lessee in equity for that term, cannot be treated as a yearly tenant under this section. *Sweetman v. Metropolitan Railway Company*, 1 H. & M. 543.

The interest of partners in the business premises occupied by the firm, although the lease may have been granted to one partner only, is apparently an interest greater than that of tenants from year to year, although there may be no stipulations as to the term of such occupation. They are joint occupiers as long as the partnership continues. *Reg. v. East London Railway Company; Ex parte Barnes*, 17 L. T. (N.S.) 291.

Date for determining tenant's interest.—If no notice to treat has been given and the promoters enter, the proper date for ascertaining the rights of the parties is the date of entry. *Reg. v. Great Northern Railway Company*, 2 Q. B. D. 151, per LUSH, J., p. 155.

If, by the special Act, a six months' notice in writing is required to be given by promoters of their intention to take land, the date of the delivery of such notice is the date to be considered in determining whether a tenant has a greater interest than as tenant for a year or from year to year. *Tyson v. Mayor of London*, L. R. 7 C. P. 18.

Apart from the provisions of the special Act, as far as section 121 is concerned, the estate or interest of the party seeking compensation must be regarded at the time of giving the notice to take. S. C., per WILLES, J., p. 23.

If the promoters enter under section 85, the date of such entry would be the date of determining the tenant's interest, and it has been held that if a notice to treat has been given some time previously under

which nothing has been done, and in the interval between serving such notice and taking possession the tenant's interest has become less than an interest for a year, the notice to treat does not affect the case, and the magistrate has jurisdiction. *Reg. v. Kennedy* [1893], 1 Q. B. 533; and *North v. Beasley Heath Railway Company* [1894], 2 Q. B. 579. Sect. 121.

"Be required to give up possession."—This section does not apply unless the tenant is required to give up possession of his land. Thus, if he receive a notice to treat, such notice to treat is not a requiring possession under this section, and if he claims more than 50l. he cannot, until possession is required, have the compensation settled by justices under this section. *R. v. Stone*, L. R. 1 Q. B. 529. Similarly, if his land is injuriously affected, but none of it is taken, this section is not applicable, but he must proceed under section 68. *Reg. v. Sheriff of Middlesex*, 10 W. R. 717.

It would appear that no notice to treat is required to be given to a tenant whose interest is not greater than a tenant from year to year. *Syers v. Metropolitan Board of Works*, 36 L. T. (N.S.) 277, p. 278, per JESSEL, M.R.

"Before the expiration of his term."—If the promoters purchase the reversion and give the tenant notice to quit under the terms of his lease, and do not take possession until the notice has expired, the tenant has no interest, legal or equitable, in the lands, and can make no claim for compensation under this or any other section. *Syers v. Metropolitan Board of Works*, 36 L. T. (N.S.) 277.

If the tenant receive notice to quit from his landlord and hold over, he will have no claim on the compensation paid, although the notice was given by the landlord in order to sell the premises to the promoters of the undertaking (*Ex parte Nadin*, 17 L. J. Ch. 421); and if notice to quit is given by a landlord and the promoters do not take possession until after the notice has expired, the tenant can recover no compensation, although notice to treat may have been given under section 18 before the landlord gave him notice to quit. *Ex parte Merrett*, 2 L. T. (N.S.) 471.

In such a case if a notice to treat is given, the tenant should at once compel the promoters to proceed under the notice and have his interest assessed. *Reg. v. Vaughan*, L. R. 4 Q. B. 190, 195; *Reg. v. Kennedy* [1893], 1 Q. B. 533; and see section 18 and note thereto, *ante*, p. 43. A landlord, after notice to treat has been served upon him, cannot turn a weekly tenancy into one for more than a year so as to give the tenant a claim for compensation against the promoters. *Ex parte Edwards*, 12 Eq. 389.

If, under a local Act, the tenant receives six months' notice that the promoters require possession, and at the end of the six months he does not go nor do the promoters take possession, and they afterwards acquire the landlord's interest in the premises, but no notice to quit is given, they cannot turn out the tenant and take possession without paying him compensation. If he had gone at the end of the six months he would have been entitled to compensation, and although he stayed on he was a mere tenant at sufferance, liable to be turned out at a moment's notice. *Cranwell v. Mayor of London*, L. R. 5 Ex. 284. If the promoters allow the tenant to continue after the six months, and the tenant accepts this as satisfaction, he will, of course, have no claim for compensation. *Reg. v. London and Southampton Railway Company*, 10

Sect. 121. Ad. & E. 3, p. 10, explained in the above case, p. 288. The effect of such a notice, even if not acted upon, will entitle the tenant to compensation in respect of any expenses to which he may thereby have been put. *Reg. v. Commissioners of Rochdale*, 2 Jur. (n.s.) 861.

A tenant leaving in the middle of a quarter will be liable to his landlord for the quarter's rent. *Wainwright v. Ramsden*, 5 M. & W. 602.

A tenant who determines his lease by a six months' notice, because the works to be executed will interfere with his business, has no claim for compensation. *Reg. v. Poulter*, 20 Q. B. D. 133.

"He shall be entitled to compensation."—The items of compensation under this section are similar to those in other cases where land is taken. See section 63 and notes thereto, where the principles of compensation when land is taken are discussed, *ante*, p. 111. The words in this section are wide enough to include every kind of damage or loss which the tenant can suffer. See per LUSH, J., *Reg. v. Great Northern Railway Company*, 2 Q. B. D. 151, p. 156.

But if the land taken is held for a term of less than a year and is severed from land held for a term greater than for a year, the justices have no jurisdiction, and the compensation must be assessed under section 68. There can only be one assessment; part cannot be decided under section 121 and part under section 68; and if in previous proceedings the magistrate has been ordered to try the case as having jurisdiction, he cannot award compensation in respect of the damages for injurious affection caused by such severance. *Bezley Heath Railway Company v. North* [1894], 2 Q. B. 579; and as to the previous proceedings, *Reg. v. Kennedy* [1893], 1 Q. B. 533, where apparently it was assumed that the tenant had no colourable claim for compensation for injurious affection.

"Determined by two Justices."—See, as to two justices, definition section 3, *ante*, p. 6.

As to the jurisdiction of justices in ascertaining compensation, see section 22 and notes, *ante*, p. 55.

As to procedure before them, see section 24, *ante*, p. 59.

It is not necessary that the determination under this section should be put into writing by the justices; it may be given verbally. *Reg. v. Boyce Combe*, 32 L. J. M. C. 67.

Where greater interest claimed than from year to year, lease to be produced.

122. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant

holding only from year to year, and be entitled to compensation accordingly. **Sect. 122.**

"May require such party to produce the Lease."—The production of an agreement for a lease, although void at law, if good in equity, is sufficient under this section. *Sweetman v. Metropolitan Railway Company*, 1 H. & M. 543; and see *In re King's Leasehold Estates*, 16 Eq. 521.

123. And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed not after the expiration of three years from the passing of the special Act. Limit of time for compulsory purchase.

"For the compulsory Purchase or taking."—In the special Act a time is now always prescribed for the execution of the works as well as for the exercise of their compulsory powers of purchase. At the time of the Lands Clauses Act this does not appear to have been so universal a practice. Per BLACKBURN, J. *Tiverton, &c., Railway Company v. Loosemore*, 9 App. C., 480, 496.

It appears to be a sufficient purchasing or taking within this section if the promoters by notice to treat or by agreement put themselves into a position to acquire the land before the three years have expired, although they may not enter upon it or complete the purchase until later, provided at least, that they do enter or complete before the time has elapsed for the execution of the works.

In *The Marquis of Salisbury v. Great Northern Railway Company*, 17 Q. B. 840, it was held that the notice to treat under section 18 was a sufficient exercise of the compulsory power under section 123, and that entry by the company under section 85 was not an exercise of the company's powers but an act made legal by the previous exercise of these powers, and, therefore, need not be within the time prescribed by this section. That case was approved in *Loosemore v. Tiverton*, 9 A. C., 480, 488, and see *Doe d. Armitstead v. North Staffordshire Railway Company*, 16 Q. B. 526, to same effect.

It is sufficient if such entry is made a few days before the time limited for the execution of the works, and the promoters cannot be restrained by injunction at the instance of the landowner from remaining in possession and completing their works after that time has elapsed, as the time limited for the execution of the works is merely a limit of time for exercising the powers of the Act as to the construction of the works. *Tiverton v. Loosemore*, 9 A. C. 480.

If the promoters serve a notice to treat and nothing more is done by either party, both promoters and landowner will apparently be disabled from enforcing their rights after the time has expired for executing the works. *Richmond v. North London Railway Company*, 3 Ch. 680, and *Tiverton v. Loosemore*, per Lord CAIRNS, p. 489; Lord BLACKBURN, p. 497. But there appears no reason if there has been no sleeping upon their rights why, after that date, the promoters should not fulfil their obligations and have the compensation ascertained and paid. S. C.,

Sect. 123. pp. 490, 491, and *Webb v. Direct London and Portsmouth Railway Company*, 9 Hare. 129, p. 140; *Worsley v. South Devon Railway Company*, 16 Q. B. 539, 545. See also section 18, note "How validity of notice affected," *ante*, p. 46.

Where an agreement made between a landowner and a company authorised the company to take certain land within a fixed period, and if they should require any additional land, the same should be taken and paid for at a fixed price, it was held that the agreement authorised the company to take such land at any time before the period limited for completing the works. *Rangeley v. Midland Railway Company*, 3 Ch. 306, and see *Kemp v. South Eastern Railway Company*, 7 Ch. 364.

"If no period be prescribed."—If in an Act for extending a railway several purposes are authorised and times limited for the purchase of land for the specific purposes, but none for the general purposes, then the limit of three years here specified will apply as regards the purchase of land for such general purposes. *Seymour v. London and North Western Railway Company*, 33 L. T. (o.s.) 280.

And with respect to interests or lands which have by mistake been omitted to be purchased, be it enacted as follows : (a)

Promoters of the undertaking empowered to purchase interests in lands the purchase whereof may have been omitted by mistake.

124. If, at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of this or the special Act, or any Act incorporated therewith, they were authorised to purchase, and which shall be permanently required for the purposes of the special Act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided within six months after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne

profits or interest which would have accrued to such parties **Sect. 124.** respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase money or compensation by the promoters of the undertaking, so far as such ~~these~~ profits or interests may be recoverable in law or equity; and such purchase money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this Act the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.(b)

(a) Sections 124—126.

(b) See section 21, note "Shall be settled in the manner hereinafter provided," *ante*, p. 52.

"Through Mistake or Inadvertence."—If the promoters, in the belief that the amount assessed for premises will exceed the amount due under an equitable mortgage which they know to exist on premises, deal only with the mortgagors and have the value of the premises assessed as if there was no mortgage, and it turns out that they were mistaken as to their belief, and that the value of the premises is less than the amount of the mortgage, such mistake is not one that will bring them within the provisions of this section. *Martin v. London, Chatham, and Dover Railway Company*, 1 Ch. 501. Similarly, if promoters, knowing that a person owns certain land, but there is some difficulty in proving the exact position or extent, and they take part of this land without compensation, they cannot afterwards proceed under this section in order to protect themselves from ejectment, and the owner will be entitled to have the land valued according to the improved value and not according to value at the date when it was taken. *Stretton v. Great Western and Brentford Railway Company*, 5 Ch. 751. In such a case the owner might bring an action for damages for trespass. *Thomas v. Barry Dock and Railway Company*, 5 Times L. R. 360.

Where the promoters entered upon land and had the same assessed according to their plans and books of reference, and it was shown afterwards upon an action for ejectment that they had taken possession of 2 roods and 5 perches beyond the admeasurement in such books, they were held entitled to proceed under this section, provided they did so within six months from the date when the action of ejectment was concluded, which was held to be within six months from the date when a new trial was refused. *Hyde v. Mayor of Manchester*, 8 De G. & S. 249.

As to the correction of mistakes in plans in the case of railways, see the Railways Clauses Act, 1845, s. 7, *post*, and a similar provision will be found in the other Clauses Consolidation Acts. See the same, *post*.

Where promoters have taken land from the ostensible owner, and

Sect. 124. having entered into possession, are afterwards informed that there is a mortgage on the land of which they were previously ignorant, they can take the benefit of this section. *Jolly v. Wimbledon, &c., Railway Company*, 31 L. J. Q. B. 95.

“Shall remain in the Undisturbed possession.”—The effect of this is that if there is a *bonâ fide* mistake, and there is no dispute as to title, the promoters have a right to undisturbed possession during six months, and no action of ejectment will lie against them during that time. *Jolly v. Wimbledon Railway Company*, 31 L. J. Q. B. 95.

If the title is in dispute, an action of ejectment will lie for the purpose of deciding the dispute and the purpose of the Act will be carried out by staying the execution for six months. *Marquis of Salisbury v. Great Northern Railway Company*, 7 W. R. 75.

If the owner makes no claim for some time, an injunction will not lie, but the remedy will be by an action for damages for trespass. *Thomas v. Barry Dock and Railway Company*, 5 T. L. R. 360.

How value
of such
lands to be
estimated.

125. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate, or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works, made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

If the promoters have entered knowingly, the landowner, if he does not insist on ejectment, is entitled to have the compensation assessed according to the improved value. *Stretton v. Great Western Railway Company*, 5 Ch. 751.

As to the procedure for compensation, see as to justices, sections 22—24; arbitrators, sections 23, 25—34; juries, sections 35—57. As to the principles, see sections 63 and 68.

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126. In addition to the said purchase money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses

shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place. Sect. 126.

The full costs and expenses.—These mean costs as between solicitor and client and not merely as between party and party. *Doe d. Hyde v. Mayor of Manchester*, 12 C. B. 474, 479.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows : (a)

127. Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase money arising from such sales to the purposes of the special Act: and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same. Lands not wanted to be sold, or in default to vest in owners of adjoining lands.

(a) Sections 127—132. As to the meaning of this heading, see note "Such superfluous lands," *infra*.

The object of the legislature in these sections is to secure to the landowners from whom land is taken by compulsion a reverting, as nearly as the legislature can accomplish it, of all land which becomes useless or is not wanted for the purpose of the national enterprise which has been sanctioned by Parliament. See *Great Western Railway Company v. May*, L. R. 7 H. L. 283, per CAIRNS, L.C., p. 295.

Certain statutes, such as the Metropolitan District Act, 1868, give the promoters unrestricted power of sale over their superfluous lands, and they are thereby relieved from the conditions and restrictions contained in sections 127 and 128. *Tomlin v. Budd*, 18 Eq. 368. Statutes enabling land to be taken for purposes of public improvement generally contain special provisions as to superfluous lands. The Public Health Act, 1875, for example, excludes this section (s. 176, *post*), and the Small Agricultural Holdings Act, 1892, incorporates only sections 128—131; see *post*.

"Lands bought for extraordinary purposes."—Promoters are frequently allowed to purchase land for extraordinary purposes, as, for example, by the Railways Clauses Act, 1845, section 45, *post*. Such

Sect. 127. lands may be bought and sold under sections 12 and 13 of the Lands Clauses Act, *supra*, and as the promoters may buy and sell such land as they may require it or not (section 14), these sections are not, therefore, applicable. See *Hooper v. Bourne*, 3 Q. B. D. 258, per BRETT, L.J., p. 281. It was so decided as regards the somewhat similar clause in the Lands Clauses Consolidation (Scotland) Act. *City of Glasgow Union Railway Company v. Caledonian Railway Company*, L. R. 2 H. L. Sc, 160. In that case Lord WESTBURY expressed the opinion that a company is left to deal with the lands which they have acquired by private treaty as any ordinary proprietor, using the words "private treaty" in the sense not merely that they were purchased by agreement, but that they had no compulsory powers in respect of them. If the lands are within the limits of deviation they can be purchased by private treaty after the compulsory powers of taking lands have expired. P. 165, cf. *Hooper v. Bourne*, 3 Q. B. D. 258.

"Such superfluous lands."—These words refer to the heading of these clauses. "Superfluous land" is land "acquired by the promoters of the undertaking," but not "required for the purposes thereof." "Thereof" may refer either to the undertaking (the view now accepted) or to the special or incorporated Acts. *Great Western Railway Company v. May*, L. R. 7 H. L. 283, per Lord CAIRNS, p. 292. "Required" is used not in the sense of demanded, but of necessary. Per Lord SELBORNE in S. C., p. 303.

In that case Lord CAIRNS (p. 292) mentioned four classes of cases where lands would become superfluous; these are:—

- (1.) Land taken under compulsory powers, but taken under a wrong estimate of the quantity of land necessary for a purpose, for which it is afterwards found that less land would be sufficient.
- (2.) Land which the promoters may have been forced to take by reason of wishing to take a part only of premises (*i.e.*, under sections 92 and 93).
- (3.) Land taken and required originally for permanent works, but which were found unnecessary and were abandoned.
- (4.) Land taken for temporary purposes, with the intention only of being used for temporary purposes, which purposes have come to an end.

Land may be said to be "required" for the purposes of the undertaking if (1) it is in actual use; (2) if it is wanted within a definite and ascertained time; and (3) if it will be wanted within a reasonable time which it is not possible to specify. *Hooper v. Bourne*, 3 Q. B. D. 258, per BRAMWELL, L.J., pp. 274—275, and see in the House of Lords, 5 App. C. 1. When a thing is said to be "required" for the purposes of a railway, it is not meant that no equivalent or substitute for it can be found, but it is meant that the thing is or will be at a future time, useful for carrying on the traffic. S. C., p. 280.

See section 18, note, *ante*, p. 34.

The question as to whether land is superfluous or not is a mixed question of law and fact, and one of the most difficult of such questions that have come before a Court, and will probably be better tried by a judge than by a judge and jury. *Smith v. North Staffordshire Railway Company*, 44 L. T. (N.S.) 85.

Cases as to whether lands are superfluous or not.—Where a railway company purchased land for the purpose of making an underground railway, and excavated the soil, constructed the line, and then built an

to cover it and replaced the surface, it was held that they were not authorized to sell this surface as superfluous land within this section, on the principle that if a horizontal stratum was required, that means the land itself is required, inasmuch as "land" in this section means and properly so called and not a slice of land taken horizontally. *In re Metropolitan District Railway Company and Cook*, 13 Ch. D. 607, and see *Ex parte Bourne*, 5 App. C. 1; 3 Q. B. D. 258. A purchaser of such a surface has a possessory title which is good against all the world except those who might be proved to have a better one, and it may possibly pass into a good possessory title under the Statute of Limitations; he can, therefore, sell his possession as it is more than a revocable license or easement. *Rosenberg v. Cook*, 8 Q. B. D. 162. Such a tunnel as above described is not a mere easement, but is an interest in land. *Metropolitan Railway Company v. Fowler* [1893], A. C. 416.

If a railway company have built a boundary wall and the adjoining field is superfluous, they may sell the surface up to the wall, although the foundations of the wall extend some 18 inches beyond the wall. *Ware v. London, Brighton and South Coast Railway Company*, 31 W. R. 228.

The fact that land retained has not been built on is not conclusive that it is superfluous; all the circumstances must be taken into account, as, for example, if the lands are said to be required for additional sidings, it should be considered whether they are near a populous town and whether additional sidings have subsequently become necessary, the dealings of the company with persons occupying the land should also be regarded. *Hooper v. Bourne*, 5 App. Cas. 1.

In determining the fact whether lands not used are superfluous or not, the following facts are material—that they are small pieces of land near an important railway station, and connected with the station and with the access to it; that they were acquired for the purposes of the railway company; that the proper advisers say that they will be required, although no time be stated; that the company have been without the lands necessary to utilise the land. On these facts a jury would be amply justified in finding for the company. *Betts v. Great Eastern Railway Company*, 49 L. J. Ex. 197, in the House of Lords.

In that case, when before the Court of Appeal, BRAMWELL, L.J., expressed an opinion that when a piece of land taken as a whole is wanted for the purposes of a railway, a discussion should not be allowed as to whether small portions of it are superfluous. 3 Ex. D. 182, p. 187, and per COTTON, L.J., p. 193.

Land under arches, on which a railway line is laid and a station built, is not superfluous land, although some of it be let on short terms. The Court so held, partly on the ground that such land is a horizontal stratum only and not land in the ordinary sense, and partly because such land might be necessary for repairs. *Mulliner v. Midland Railway Company*, 11 Ch. D. 611.

The company may lease such land, and generally a company is entitled to use its land in any mode not inconsistent with the provisions of its Act provided they do not infringe the rights of other persons. *Foster v. London and North Western Railway Company*, 64 L. J. Q. B. 65; *Bostock v. North Staffordshire Railway Company* 4 E. & B. 798; *Teebay v. Manchester, Sheffield, and Lincolnshire Railway Company*, 24 Ch. D. 572.

The mere fact that the company have sold the land is not conclusive as to its being superfluous, as they may in excess of their powers sell it to another company for the use of the undertakings jointly. *Hobbs v. Midland Railway Company*, 20 Ch. D. 418.

It would seem that where the natural drainage of land belonging to

Sect. 127.

Sect. 127. a railway company, and let by them for agricultural purposes, flows into a reservoir used by them for supplying water to their engines, such land is not superfluous. *Hooper v. Bourne*, 3 Q. B. D. 258, 279.

If land is *bond fide* bought for the purposes of a railway company, and by an alteration in the construction of the works it is not so used, but is devoted to the purpose of supplying accommodation works under sections 16 and 68 of the Railway Clauses Act, 1845, it will not become thereby superfluous land under this section. *Beauchamp v. Great Western Railway Company*, L. R. 3 Ch. 745, and cf. *Rangeley v. Midland Railway Company*, 3 Ch. 306.

In the following cases the land has been held to be superfluous :—

Where land was acquired by a company for the purpose of depositing spoil, but upon which they had ceased to deposit spoil, and all the purposes connected with this land had been satisfied, the land was held to be superfluous. *Great Western Railway Company v. May*, L. R. 7 H. L. 283.

Where a railway company had fenced off land adjoining the railway, and had made a ditch and planted a hedge between the fence and the railway, and allowed the fence to decay, and the site of the fence was cultivated as part of the adjoining field, the land between the fence and hedge was held to be superfluous land. *Norton v. London and North Western Railway Company*, 13 Ch. D. 268.

It is no answer to a claim that land is superfluous to say that the company have only the reversion and that the tenant has not been turned out. *Moody v. Corbett*, 34 L. J. Q. B. 166; on app. L. R. 1 Q. B. 510.

If a company offer to sell the land and advertise it and describe it in the particulars of sale as "surplus lands," this will amount to a declaration by the company that they are superfluous (*London and South Western Railway Company v. Blackmore*, L. R. 4 H. L. 610), or if they dedicate part of the land as a public way (*Beauchamp v. Great Western Railway Company*, 3 Ch. 745), and generally if they sell it. *Carrington v. Wycombe Railway Company*, 3 Ch. 377.

In endeavouring to show that land is superfluous by reason of it being offered for sale by auction, it is not enough to show that the auction had been held or that the auctioneer was instructed by the secretary of the company, but it must be shown that it was held by the authority of the directors of the company. *Moody v. London and Brighton Railway Company*, 1 B. & S. 295.

The time for ascertaining land to be superfluous.—The time is the prescribed period or the end of ten years from the time limited for the completion of the works. If the land at that moment is not required for the purposes of the undertaking then it vests in the adjoining owner, unless it is sold at that moment or steps have been taken to have it sold. If not sold before that period then, all lands, of which as a question of fact it can be predicated that they are superfluous, thereupon vest in the adjoining owner. *Great Western Railway Company v. May*, L. R. 7 H. L. 283, pp. 295, 296.

There is no doubt that the company can before the expiration of that time determine that the land is superfluous and sell it; and if at the end of the period their proper advisers have fairly and reasonably come to the conclusion that the land may be required for the purposes of the undertaking, then it is not superfluous. The vesting may thus be delayed after the statutory period without the land being actually used, but whenever it is determined, either before or after the expiration of that period that the land is superfluous, it becomes saleable or

in the adjoining owner. *London and South Western Railway Sect. 127.* *Gomm v. Gomm*, 20 Ch. D. 562, per JESSEL, M.R., p. 584. As to selling before the expiration of the period, see same judge in *In re Metropolitan Railway Company and Cosh*, 13 Ch. D. 607, p. 615; *Betts v. Great Eastern Railway Company*, 49 L. J. Ex. 197.

The claim by the adjoining owner is made some years after the period has passed, then from these cases (above cited) the end of the period is the time to consider whether the land was or was not wanted. Subsequent events are, however, admissible in evidence to show whether the lands were reasonably required at that date for the purposes of the undertaking. It is a question of fact and it must be shown by the claimant that the lands were not required, and if the company determined that they were required he must show that they were on improper grounds; and see also *Hooper v. Bourne*, 5 App. C. 144, B. D. 258, p. 278.

If the company after the period has expired obtain a new Act with a view to extending the period at which lands are to be deemed superfluous, this will not affect any rights already vested in respect of such lands. *Bayley v. Corbett*, 34 L. J. Q. B. 166; on appeal, L. R. 1 Q. B. 510.

Until the time arrives when the lands become superfluous the proprietors may use them for the same or similar purposes for which they were previously used, provided they do not alter the ground by erecting buildings and interfering with their neighbours' rights. *Bayley v. Great Eastern Railway Company*, 26 Ch. D. 484; *Norton v. London and North Western Railway Company*, 9 Ch. D. 623, to the contrary, was overruled by *Foster v. London, Chatham and Dover Railway Company*, 64 L. J. Q. B. 65.

It follows, therefore, that if a railway company buy land with a stable upon it, with a continuous and apparent easement attached thereto in the form of a private road over other lands of the vendor, that they will be entitled to use that road as long as they use the premises as a stable, and they may use it as a stable until it is required for the purposes of the railway or until the land becomes superfluous. When the use of the land is altered the easement will probably cease. *Bayley v. Great Western Railway Company*, 26 Ch. D. 434.

"Shall absolutely sell and dispose."—When land is sold as superfluous no interest can be retained by the company in the land. A sale of land, therefore, which contains a covenant that the company may buy the land back if required, gives the company an interest in the land, the sale is thus conditional, and is, therefore, *ultra vires* and void. *London and South Western Railway Company v. Gomm*, 20 Ch. D. 562.

In that case it was also held that the covenant as it gave the company an interest in the land was also void for remoteness. Although the agreement was void the defendant was held to be entitled to the land either by it vesting in him as an adjoining owner under this section, or as having acquired a title under the Statute of Limitations.

In the case of *Ray v. Walker* (1892), 2 Q. B. 88, the company had sold the land subject to a covenant by the purchaser that he would resell to the company, if at any time required, a certain defined portion of the land. The adjoining owner claimed the whole of the land so sold as his under this section, but it was held that the covenant only voided the sale as to the portion agreed to be resold; and, further, as this particular portion was a strip along a railway, the person who was the adjoining owner at the end of ten years was the purchaser, and it, therefore, vested in him.

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If the claim by the adjoining owner is made some years after the statutory period has passed, then from these cases (above cited) the end of that period is the time to consider whether the land was or was not superfluous. Subsequent events are, however, admissible in evidence as to whether the lands were reasonably required at that date for the purposes of the undertaking. It is a question of fact and it must be shown by the claimant that the lands were not required, and if the company determined that they were required he must show that they did so on improper grounds; and see also *Hooper v. Bourne*, 5 App. C. 1 & 3 Q. B. D. 258, p. 278.

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"Shall absolutely sell and dispose."—When land is sold as superfluous no interest can be retained by the company in the land. A sale of land, therefore, which contains a covenant that the company may buy the land back if required, gives the company an interest in the land, the sale is thus conditional, and is, therefore, *ultra vires* and void. *London and South Western Railway Company v. Gomm*, 20 Ch. D. 562.

In that case it was also held that the covenant as it gave the company an interest in the land was also void for remoteness. Although the agreement was void the defendant was held to be entitled to the land either by it vesting in him as an adjoining owner under this section, or as having acquired a title under the Statute of Limitations.

In the case of *Ray v. Walker* (1892), 2 Q. B. 88, the company had sold the land subject to a covenant by the purchaser that he would resell to the company, if at any time required, a certain defined portion of the land. The adjoining owner claimed the whole of the land so sold as his under this section, but it was held that the covenant only voided the sale as to the portion agreed to be resold; and, further, as this particular portion was a strip along a railway, the person who was the adjoining owner at the end of ten years was the purchaser, and it, therefore, vested in him.

Sect. 127. It has, however, been held that a railway company may sell its superfluous land in the way most advantageous to itself, and may impose conditions as to its user for the advantage of the company, as, for example, that premises shall not be used as a public-house, and in that respect companies have the rights of ordinary owners. *In re Higgins and Hitchman's Contract*, 21 Ch. D. 95. A company may also erect a screen opposite windows to prevent an easement of light and air being acquired over its land (*Bonner v. Great Western Railway Company*, 24 Ch. D. 1), but if a company cannot grant an easement it would appear to be doubtful if one could be acquired by prescription; and see as to the erection of hoardings, *JAMES, L.J.*, in *Norton v. London and North Western Railway Company*, 13 Ch. D. 268, pp. 274—276; and see *Foster v. London, Chatham and Dover Railway Company*, 64 L. J. Q. B. 65, overruling the decision of *MALINS, V.C.*, in *Norton v. London, Chatham and Dover Railway Company*, 9 Ch. D. 623.

Where the company sells lands just before the period expires, but by another deed retains a lien upon them for the unpaid purchase money, it is doubtful whether this is an absolute sale, and a subsequent purchaser cannot be bound to take such land, although the purchase money may have since been paid off. *In re Thackray and Young's Contract*, 40 Ch. D. 34.

As to the right of pre-emption, see next section.

What the purchaser acquires.—I. If land superfluous.—The purchaser does not acquire any greater right in the land than that of the promoters from whom he derives his title. If, therefore, a railway company purchases the surface of land without the mines and afterwards sells part of this land as superfluous the purchaser acquires no right of support from such minerals, and the owner thereof may work them in the usual way whether he let down the surface or not. *Pountney v. Clayton*, 11 Q. B. D. 820; and cf. *Hooper v. Bourne*, 3 Q. B. D. 258.

The purchaser also takes the land subject to the restrictions existing before it was taken compulsorily. Thus, if land taken by a railway company was part of an inclosure, and by an inclosure Act no building could be erected on it, and it is taken by a railway company and sold as superfluous land, the purchaser will be restrained from building on it. *Bird v. Eggleton*, 29 Ch. D. 1012.

II. If land not superfluous.—Unless the power is conferred by special enactment a railway company possesses no power to alienate either for value or without, any portion of the land actually used for the railway or works or to grant easements, so that any such attempted alienation or grant is void. *Mulliner v. Midland Railway Company*, 11 Ch. D. 611.

It has been held, however, that the mere fact that the land is not superfluous does not prevent an occupier who has exclusive adverse possession for twelve years from becoming entitled to the land under the Statute of Limitations. *Bobbett v. South Eastern Railway Company*, 9 Q. B. D. 424; and see *Norton v. London and North Western Railway Company*, 13 Ch. D. 268; *London and South Western Railway Company v. Gomm*, 20 Ch. D. 562.

The purchaser of superfluous land on a subsequent sale may probably find it advisable to insert as a condition of sale that the purchaser shall assume and admit that everything (if anything were necessary) was done by the company to enable them to sell and convey the land. Such a condition is good. *Best v. Hammond*, 12 Ch. D. 1; and see *Rosenberg v. Cook*, 8 Q. B. D. 162.

"Shall thereupon vest."—If the land is superfluous at the expiration of the ten years the Act of Parliament vests the land in the adjoining owner. The operation of vesting does not depend in any way upon the consent or the acceptance of the owner of the adjoining land, and it is not necessary that he should do any act to bring about the result. *Great Western Railway Company v. May*, L. R. 7 H. L. 283, p. 298. Sect. 127.

It seems doubtful as to whether the surface and the minerals can be severed so as to make either vest in the adjoining owner if the other become superfluous. *Hooper v. Bourne*, 3 Q. B. D. 258, 5 App. C. 1.

If no action is taken by the adjoining owner and the company lets the land to a yearly tenant after the period, they can bring an action of ejectment, and the tenant cannot plead thereto that the land is vested in the adjoining owner as he is estopped from disputing their title. *London and North Western Railway Company v. West*, 36 L. J. C. P. 345.

"Of the owners of the land adjoining."—Where commonable lands have been inclosed under an award made pursuant to a local statute passed subsequently to 41 Geo. 3, c. 109, and by the award the soil of the roads between the allotments remains vested in the lord of the manor, although under the above statute the grass and herbage on the road belongs to the owner of an allotment, the lord of the manor will be the adjoining owner if land on one side of the road becomes superfluous. *Hooper v. Bourne*, 3 Q. B. D. 258.

A right of pre-emption to the lands under section 128 by the owners of the lands from which they were severed will not make such owners adjoining owners within this section. S. C., p. 278.

Where, by agreement, a wall has been built on land dividing the property of an individual from that of the company, and the individual and the company are by the same agreement the joint owners of the land on which the wall is built, that will constitute the individual an adjoining owner having his right of pre-emption to the land as against the company. *London and South Western Railway Company v. Blackmore*, L. R. 4 H. L. 610, a case under section 128.

See note to section 128 "Whose lands shall immediately adjoin," post, p. 284.

"In proportion to the extent of their lands respectively adjoining."—It is left to the Courts to decide how this is to be carried out. As to some of the difficulties arising under this section, see per Lord HATHERLEY in *Great Western Railway Company v. May*, L. R. 7 H. L. 283, pp. 302—303.

In *Moody v. Corbett*, L. R. 1 Q. B. 510, the Court laid down the following rule:—"Where there are several adjoining properties in contact with the superfluous lands in question, we think it should be divided among the owners of such adjoining properties in proportion to the frontage of each; and by frontage we mean what would be the length of the line of contact of each property if such line was made straight from the point of intersection of the boundaries on one side to the point of intersection of the two boundaries on the other side." In *Smith v. Smith*, L. R. 3 Ex. 282, p. 287, a different principle appears to have been adopted.

Undertaking abandoned.—If the undertakers abandon a portion of their undertaking, this in itself does not make the land superfluous,

Sect. 127. and the landowner from whose lands they were severed is not entitled to have them reconveyed to him. *Astley v. Manchester, Sheffield, and Lincolnshire Railway Company*, 27 L. J. C. P. 478.

Where undertakings are abandoned provision is usually made for compensation to landowners whose rights have been interfered with, as, for example, by the Railways Abandonment Act, 1850, ss. 17—27, 34, *post*.

In these cases the special provisions apply, and section 127 of this Act has no application. *Smith v. Smith*, L. R. 3 Ex. 282.

Lands to be offered to owner of lands from which they were originally taken or to adjoining owners.

128. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

“Dispose.”—This means transferring them to some other person. An application to Parliament to sanction their being used for a different purpose, as for a new line of railway, is not a disposing of them under this section. *Astley v. Manchester, Sheffield, and Lincolnshire Railway Company*, 27 L. J. Ch. 478.

But selling them or dedicating them as a public highway is a disposing of them. *London and South Western Railway Company v. Blackmore*, L. R. 4 H. L. 610; *Curington v. Wycombe Railway Company*, 3 Ch. 377; *Beauchamp v. Great Western Railway Company*, 3 Ch. 745.

The effect of this section is not, it would appear, to prevent the company from contracting to sell before they have offered the land to the persons entitled to pre-emption, but to prevent them conveying. An agreement for sale by the company can, therefore, be enforced by them, although they have not so offered it, provided that such offer is made and refused before the conveyance. *London and Greenwich Railway Company, v. Goodchild*, 3 Ry. Cas. 507, decided on a special Act with a somewhat similar provision.

“Within a town.”—The word town here is used in a popular sense as a congregation of houses, and land will be within a town if it is surrounded by houses so reasonably near that the inhabitants might

fairly said to dwell together. See *Reg. v. Cottle*, 16 Q. B. 412, **Sect. 128.** p. 416, 420; *Elliott v. South Devon Railway Company*, 2 Exch. 725, approved by the House of Lords in *London and South Western Railway Company v. Blackmore*, L. R. 4 H. L. 610. In that last case, *HAIRERLEY, L.C.*, said the above definition amounts to this: "That where there is such an amount of continuous occupancy of the ground by houses that persons may be said to be living, as it were, in the same town or place continuously, there—for the purposes of the Railway Act and according to the popular sense of the word, and not the legal sense of the word, which would not give at all a sensible definition—the place may be said to be a town."

It follows from that definition that land within a borough may not be "within a town" under this section if it is separated from the mass of the houses and is not surrounded by land covered by continuous houses, using the term "continuous" in the popular sense as distinguished from contiguous. *Carington v. Wycombe Railway Company*, 3 Ch. 377.

See also note to section 93, *ante*, p. 245.

As to the extent of London, see *Wallace v. Attorney-General*, 33 Beav. 364, and *Coventry v. London, Brighton, and South Coast Railway Company*, 5 Eq. 104.

"Lands built upon."—These words mean something which, though it cannot be called land in a town or part of a town, is land covered with continuous buildings *eodem modo* as the solum of the town; it does not mean a piece of land in the open country that has a house upon it. *Carington v. Wycombe Railway Company*, 3 Ch. 377.

"Or used for building purposes."—These words are to be construed with reference to the previous words "lands built upon." It must be land connected with or used with land built over, as for a reasonably-sized garden or for a reasonable amount of curtilage. It does not mean land suitable for building purposes, or what is ordinarily called building land. *London and South Western Railway Company v. Blackmore*, L. R. 4 H. L. 610. It ought actually to be land used for building purposes. *Carington v. Wycombe Railway Company*, 3 Ch. 377, p. 384. It would appear to be enough if the houses are actually laid out, if the land has been sold as building land or let upon building leases though the houses are not actually built. *Coventry v. London, Brighton and South Coast Railway Company*, 5 Eq. 104.

"First offer to sell."—It is not necessary that the ten years mentioned in section 127 should expire in order to enable the landowner to claim his right of pre-emption. If by selling it to some one else, or by any other act, the promoters thereby show it to be superfluous land, the landowner from whose lands it was severed may at once bring an action to enforce this right of pre-emption. The right of pre-emption arises at the very moment the directors of a company chose to sell. *Carington v. Wycombe Railway Company*, 3 Ch. 377; *London and South Western Railway Company v. Blackmore*, L. R. 4 H. L. 610; *Hobbs v. Midland Railway Company*, 20 Ch. D. 418.

As to when lands do become superfluous, see note to section 127, *ante*, p. 278.

In some special Acts it is provided that superfluous lands shall be first offered to the person or persons of whom the same were purchased. In such a case, the right of pre-emption is confined to the actual

Sect. 128. vendors and no claim can be made by their successors in title. *Highgate Archway Company v. Jeakes*, 12 Eq. 9.

"From which the same were originally severed."—The right of pre-emption in this case given to the owner of the lands from which they were originally severed does not make such person an adjoining owner within the meaning of the last section. *Hooper v. Bourne*, Q. B. 258, p. 278; *Hobbs v. Midland Railway Company*, 20 Ch. D. 411, 429.

As to when lands can be said to be severed, see note to section 63 *ante*, p. 117.

It would appear that where land is severed from other land held therewith under the meaning of section 63 that if part of such land become superfluous it must be offered to the person from whom it was taken. *Hobbs v. Midland Railway Company*, 20 Ch. D. 418, p. 430.

"Whose lands shall immediately adjoin."—The persons whose lands adjoin the superfluous land, and are by this Act entitled to buy will include persons having a limited interest. Lessees for years would therefore, come within the meaning and would be entitled to have the right of pre-emption offered them provided all the other adjoining owners decline to take it. *Coventry v. London, Brighton, and South Coast Railway Company*, 5 Eq. 104.

If a private road intervene between the superfluous land and the land leased, over which the lessees have the exclusive right of user this will not prevent them from being owners of lands immediately adjoining within the meaning of this section (S. C.), but see section 127, note "Of the owners of the land adjoining," *ante*, p. 281.

"Where more than one such person."—If there be more than one adjoining owner, he cannot insist on the promoters offering the land to him, but he can insist that they shall not offer the land to a stranger without at least offering it to him in his turn. If the promoters have made no choice, all the adjoining proprietors stand *in pari ratione*. If one adjoining owner, therefore, seek to enforce his right, an inquiry will be ordered as to whether any other adjoining owner desires to purchase, and if none, then it must be offered to the owner applying. If any adjoining owner other than the one applying so desires, the Court will reserve liberty to apply. *London and South Western Railway Company v. Blackmore*, L. R. 4 H. L. 610, and see Form of Order, p. 627.

It would appear doubtful how far this applies to persons with limited interests in the plots of the adjoining lands and if they would only be entitled to a right of pre-emption to the extent of their limited interest. *Coventry v. London, Brighton, and South Coast Railway Company*, 5 Eq. 104, p. 108.

Right
of pre-
emption
to be
claimed
within six
weeks.

129. If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or

...ecting in respect of the lands included in such offer shall **Sect. 129.**
 be; and a declaration in writing made before a justice by
 one person not interested in the matter in question, stating
 that such offer was made and was refused, or not accepted
 within six weeks from the time of making the same, or that
 the person or all the persons entitled to the right of pre-
 emptio were out of the country, or could not after diligent
 inquiry be found, or were not capable of entering into a
 contract for the purchase of such lands, shall in all Courts be
 sufficient evidence of the facts therein stated.

130. If any person entitled to such pre-emption be **Differ-**
 desirous of purchasing any such lands, and such person and **ences as to**
 the promoters of the undertaking do not agree as to the price **price to be**
 thereof, then such price shall be ascertained by arbitration, **settled by**
 and the costs of such arbitration shall be in the discretion of **arbitra-**
 the arbitrators. **tion.**

An arbitration under this section is not governed by the earlier
 sections of this Act as to settling questions of disputed compensation by
 arbitration (sections 23, 25—37). The company is not bound to pay the
 costs under section 34, and the arbitrator has power to order each party
 to pay his own costs. *In re Eyre's Trusts*, W. N. (1869) 76.

As these sections of the Lands Clauses Act do not apply, a *mandamus*
 will not be granted to compel the company to take up the award. The
 purchaser may do so himself. *Jones v. South Staffordshire Railway Com-*
pany, 18 L. T. (N.S.) 603.

It would seem to follow, therefore, that such costs cannot be taxed by
 a taxing master under the Lands Clauses (Taxation of Costs) Act, 1895,
 s. 1, as that applies to arbitrations to settle questions of disputed
 compensation. See also section 1 of the Lands Clauses Act, 1869, *post*,
 which the later Act repeals and in effect re-enacts.

The arbitration will, however, be subject to the provisions of the
 Arbitration Act, 1889, and by section 3, Schedule I. (i), the arbitrator
 may tax the costs. See *post*.

131. Upon payment or tender to the promoters of the **Lands to**
 undertaking of the purchase money so agreed upon or deter- **be con-**
 mined as aforesaid, they shall convey such lands to the **veyed to**
 purchasers thereof by deed under the common seal of the **the pur-**
 promoters of the undertaking, if they be a corporation, or if **chasers.**
 not a corporation under the hands and seals of the promoters
 of the undertaking or any two of the directors or managers
 thereof acting by the authority of the body; and a deed so

Sect. 131. executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

As to what covenants and conditions may be inserted, see note to section 127, "Shall absolutely sell and dispose," *ante*, p. 279, and as to covenants implied, see next section. There appears now no reason why such conveyance should not be made under the Conveyancing Act, 1881 (44 & 45 Vict. c. 41).

Effect of
the word
"grant"
in convey-
ances.

132. In every conveyance of lands to be made by the promoters of the undertakers under this or the special Act the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say,)

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them:

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns (as the case may be), shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of

the undertaking and their successors, from all incumbrances created by the promoters of the undertaking: Sect. 132.

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns (as the case may be), by the promoters of the undertaking, or their successors, and all other persons claiming under them:

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them, assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

See the Conveyancing and Law of Property Act, 1881, section 49 of which provides that the word "grant" is not necessary to convey hereditaments, and as to implied covenants for title, see section 7 thereof.

133. And be it enacted, (a) that if the promoters of the undertaking become possessed by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so in accordance with the powers in that behalf given by the Acts for the redemption of the land tax. Land tax and poor's rate to be made good.

(a) These words are apparently intended to separate this section from the previous heading and make it a distinct enactment.

Sect. 133. “The promoters of the undertaking.”—Public bodies authorised to execute works under special Acts incorporating the Lands Clauses Act, 1845, who are without any pecuniary interest in the works, are “promoters” within the meaning of this section. Thus, the Metropolitan Board of Works has been held liable to make good the deficiency caused by its taking lands for public improvements. *Wheeler v. Metropolitan Board of Works*, L. R. 4 Ex. 303; *Stratton v. Metropolitan Board of Works*, L. R. 10 C. P. 76. As to the Corporation of London, see *Mayor of London v. St. Andrew's, Holborn*, L. R. 2 C. P. 574. An urban sanitary authority taking land for improvements under the Public Health Act must also make good the deficiency (*Governor of Poor of Bristol v. Mayor of Bristol*, 18 Q. B. D. 549), and so must a local authority taking land for the purposes of either Part I. or Part III. of the Housing of the Working Classes Act, 1890. *Vestry of St. Leonard's, Shoreditch v. London County Council*, 11 Times L. R., p. 420.

See definition of “Promoters of the undertaking” in section 2, *ante*, p. 4.

“By virtue of this or the special Act.”—If lands outside the limits of deviation are purchased by a railway company, by agreement with the landowner in order to buy off his opposition to the passing of the Bill, and are not used for the execution of the works, the company cannot, for the purpose of this section, be heard to say that they had become possessed of the houses otherwise than by virtue of their Acts. They have no powers except those given them by these Acts and the purchase of land otherwise than for the purposes of the undertaking would be illegal. *Overseers of Putney v. London and South Western Railway Company* (1891), 1 Q. B. 440.

“Until the works shall be completed and assessed.”—Where, by the terms of a special Act, a railway company were to make good the deficiency in the rates “until the railway or the works thereof are completed and assessed, or liable to be assessed,” it was held that the rate was a parochial rate, and that on the completion of the portion of the railway in any particular parish, that the company were no longer obliged to make good the deficiency, although the value of the completed line in the parish was of less value than the land and houses taken. The clause is not an indemnity clause after the works have been completed. *East London Railway Company v. Whitechurch*, L. R. 7 H. L. 81, overruling *Reg. v. Metropolitan District Railway Company*, L. R. 6 Q. B. 698.

In the above case it was argued that the parish officers had an option whether they would assess the company upon the railway or continue to assess it upon the rental of the lands acquired by it under the Act; but it was held that if the railway was liable to be assessed that the parish was compellable to rate it, even though such rating be less valuable than that to which the parish was entitled to while the railway was being constructed. S. C., pp. 92, 93.

In the Lands Clauses Act the words “liable to be assessed” are omitted. Lord HATHERLEY expressed the opinion that if these words had not existed in the special Act the above argument would have been stronger (p. 93).

It would seem to follow from the above case that if part of a railway is completed and being worked, that as it would then be liable to be

nessed, the parish could not claim the deficiency in respect of that **Sect. 133.**
 art. See per BRAMWELL, B., in the same case in the Exchequer Court,
 L. R. 7 Ex. 248, p. 254.

Public works.—The words of this section quoted above mark the period during which compensation shall be paid to the parish, and not the measure of the compensation—the event upon which the liability is to end, not the extent of the liability. If the land is taken for public purposes and if the works when completed will not be assessable, being public ways, this proviso does not free the promoters from making good the deficiency, and in such a case the Court will construe the section so that the promoters shall be liable to make good the deficiency, but only up to the time when the works are completed, and such parts of them as become assessable property are assessed. In these cases the promoters are usually empowered to take more land than is necessary for the actual construction of the street or public way. If the special Act provides that on the giving of a certificate of completion that the works are complete, then the date of such certificate is the date from which their liability to make good the deficiency ceases, and the other lands remaining in their hands become from that date assessable. If prior to that date any of the lands had been sold or buildings erected so that they became assessable, the rateable value of such buildings should be deducted against the deficiency. *Stratton v. Metropolitan Board of Works*, L. R. 10 C. P. 76; cf. *Wheeler v. Metropolitan Board of Works*, L. R. 4 Ex. 303.

The above principle was adopted by the Court of Appeal in *Governor of Poor of Bristol v. Mayor of Bristol*, 18 Q. B. D. 549. In that case there was no certificate of completion; the promoters were, therefore, held liable to make good the deficiency until the completion of the street, or the sale of the last piece of land in fee simple, or the creation of the last of the ground rents, whichever of these events should last happen. The sale of the land or the creation of the ground rents would bring back the land to its liability to be assessed, and the deficiency would be wiped out as the separate portions of land became rated, and it may be wiped out before all the land is sold or the rents created, as some of the land may be rated more highly after the alteration. The deficiency must, therefore, be computed from time to time until the liability ceases; that would be every six months or whatever the period of the rate, and the deficiency will be found by taking the rateable value of the lands taken at the time of the passing of the special Act, and the assessed value at the time of such computation of such of the lands taken as may have again become assessable, and the excess, if any, of the former value over the latter is the deficiency.

Where several improvement schemes are approved by the provisional order confirmed by statute, then, for the purposes of this section, each scheme is to be considered a separate undertaking, and the deficiency calculated on each separate undertaking within the area affected by it. R. C.

"To make good the deficiency."—If the promoters are not rateable in respect of lands, inasmuch as they do not beneficially occupy them, this section does not make them rateable; it merely provides that if a deficiency is occasioned in the assessments for the poor's rate by the operations of the promoters, that they shall make up that deficiency.

Sect. 133. *Mayor of London v. St. Andrew, Holborn*, L. R. 2 C. P. 574. The scheme of the section is to create a parochial indemnity during the execution of the works. *Overseers of Putney v. London and South Western Railway Company* (1891), 1 Q. B. 440, p. 443.

"Such deficiency shall be computed," &c.—The computation is to be made according to the rental at which the lands were rated or valued at the time of passing the special Act. It, therefore, follows that if the premises have not been assessed at the time of the passing of the special Act because they were in the occupation of servants of the Crown, the promoters will have to make good no deficiency although the premises would have been rateable if occupied by persons other than the servants of the Crown. *Stratton v. Metropolitan Board of Works*, L. R. 10 C. P. 79.

In computing the deficiency, it is not a question of what was paid but a question of what was assessed. To ascertain the deficiency one must first ascertain the rental at which the land was valued or rated at the time of passing the special Act and then subtract from it the rateable value of that land at the time when it is sought to ascertain the deficiency. The difference is the deficiency. It does not, therefore, matter whether at the time the houses are taken several of them are unoccupied and the parish receiving no rates in respect thereof. *Overseers of Putney v. London and South Western Railway Company* (1891), 1 Q. B. 440. Similarly, promoters cannot claim the benefit of agreements with owners of small tenements, under which a commission is allowed to them under 32 & 33 Vict. c. 41. *Vestry of St. Leonard, Shoreditch v. London County Council*, 11 Times L. R. 420.

"Deficiency" does not mean any amount that shall be found wanting to make up the amount required by the parish. *Stratton v. Metropolitan Board of Works*, L. R. 10 C. P. 76. See also on computing it from time to time as the land becomes assessable. *Governor of Poor of Bristol v. Mayor of Bristol*, 18 Q. B. D. 549, set out, *supra*.

"In the several assessments for land tax and poor's rate."—Under poor's rate are included such rates as are charged upon or made payable out of the poor's rate. These will include the borough rate under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50, s. 145), and the county rate (under 15 & 16 Vict. c. 81, s. 26). The liability of the promoters depends on the nature and incidence of these rates at the time when the deficiency takes place, and not at the date when the Lands Clauses Consolidation Act was passed. *Farmer v. London and North Western Railway Company*, 20 Q. B. D. 788.

In some special Acts the promoters are required to make good the deficiencies in the other rates, such as the sewers rate, main drainage rate, or general purposes rate. The words "general purposes rate" in such a proviso have been held to mean all rates made for purposes in which the great majority of the parishioners have a common interest, and to include the metropolitan consolidated rate, the lighting rate, and the public libraries rate. *Barrup v. London and South Western Railway Company*, 64 L. T. (N.S.) 112.

"On demand . . . the promoters . . . shall."—The liability of the promoters to make good the deficiency accrues from time to time as the rates are made; the payment is to be made on

Demand. The demand, however, need not be made from time to time **Sect. 133.**
 as the rates are made and collected. If such demand is not made when
 the rates are collected, the liability of the promoters is not extinguished
 and the arrears may be recovered in a lump sum. *Stratton v. Metro-*
politan Board of Works, L. R. 10 C. P. 76.

Enforcing payment.—The payment may be enforced by action in the
 High Court or otherwise. In the event of any disputed question of
 law being raised, it is usual to state a special case in the action.
Stratton v. Metropolitan Board of Works, L. R. 10 C. P. 76; *Governor of*
Port of Bristol v. Mayor of Bristol, 18 Q. B. D. 549, and other cases
 were cited.

134. And be it enacted, that any summons or notice, or **Service**
 any writ or other proceeding at law or in equity, requiring to **of notices**
 be served upon the promoters of the undertaking, may be **upon com-**
 served by the same being left at or transmitted through the **pany.**
 post directed to the principal office of the promoters of the
 undertaking, or one of the principal offices where there shall
 be more than one, or being given or transmitted through the
 post directed to the secretary, or in case there be no secretary,
 the solicitor of the said promoters.

Order 9, r. 8, of the Rules of the Supreme Court, which provides for
 service of a writ or summons, exempts statutory provisions from its
 operation so that they may be served as provided in this section.

Section 135 of the Companies Clauses Act, 1845, is similar in effect,
 except that when the notice is served on the secretary it must be given
 and not posted, and failing a secretary, it may be given to any one
 director of the company. Section 138 of the Railways Clauses Consoli-
 dation Act, 1845, *post*, is to the same effect, and for cases of service
 upon a railway company, see the notes to that section.

"Any Summons or Notice."—This does not contemplate any pro-
 ceedings in an action, but the section is applicable in all cases where a
 summons or notice is required for any purpose. *Ex parte Senior*, 18
 L. J. Q. B. 333, p. 334.

Wrong service or address.—If a notice is wrongly addressed, it will be
 quite sufficient provided the company are not misled. Thus, a notice
 under section 68, addressed to "The Blackburn and Clitheroe Railway
 Company," and delivered to the secretary of "The Blackburn Railway
 Company," and intended for the latter, was held to be sufficient.
Eastham v. Blackburn Railway Company, 9 Ex. Rep. 758.

If the company wish that notices should be served on their secretary
 and not on their solicitors, they should state so at once, and not after
 an award, and any endeavour to upset the award for such wrong service
 will be refused. *R. v. Metropolitan Railway Company*; *Ex parte Knock*,
 17 L. T. (N.S.) 291.

Sect. 135. **135.** And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

Tender of
amends.

As to the effect of payment into Court in an action in the High Court, see Rules of the Supreme Court, Order 22.

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows : (a)

Penalties
to be
summarily
recovered
before two
justices.

136. Every penalty or forfeiture imposed by this or the special Act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; (*and on complaint being made to any justice he shall issue a summons requiring the party complained against to appear before two justices at a time and place to be named in such summons; and every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge*

the offender to pay the penalty or forfeiture incurred, as Sect. 136. well as such costs attending the conviction as such justices shall think fit.)(b)

(a) Sections 136—148.

(b) Repealed by the Statute Law Revision Act, 1892.

The procedure will be governed by the Summary Jurisdiction Acts of 1849, 1879, and 1884, and the Summary Jurisdiction (Process) Act, 1881.

The Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4, in order to provide for uniformity of procedure before courts of summary jurisdiction and appeals therefrom, repealed, as regards England, the portion of section 136 in italics above; and sections 137, 142, 143, so far as it relates to any matter to which the Summary Jurisdiction Acts apply; section 144; and section 146 from "for the county" to end of section and Schedule C. With the exception of sections 143 and 146, these sections have been repealed altogether by the Statute Law Revision Acts.

As to the effect of the repeals by the Summary Jurisdiction Acts, see *Shingler v. Smith*, 17 Q. B. D. 49.

137. *If, forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices or either of them shall issue their or his warrant of distress accordingly.* Penalties to be levied by distress.

This section has been repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19). See note to section 136.

138. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained. Distress, how to be levied.

139. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the Application of penalties.

Sect. 139. overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish [*or if the place wherein the offence shall have been committed shall be extra-parochial then such justices shall direct such remainder to be applied in aid of the poor's rate of such extra-parochial place, or if there shall not be any poor's rate therein in aid of the poor's rate of any adjoining parish or district*].(a)

(a) These words have been repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

Distress
against the
treasurer.

140. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

Distress
not unlaw-
ful for
want of
form.

141. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

142. *No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special Act, or any Act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.* **Sect. 142.**
Penalties to be sued for within six months.

Repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19). See note to section 136, *ante*, p. 292.

143. *It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.* Penalty on witnesses making default.

The Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4, has repealed this section as regards England so far as relates to any matter to which the Summary Jurisdiction Acts apply. These Acts are, as regards England, the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43); the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49); the Summary Jurisdiction Act, 1884, and the Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24).

As to procedure before justices in cases of disputed compensation, see section 24, *ante*, p. 59.

144. *The justices before whom any person shall be convicted of any offence against this or the special Act, or any Act incorporated therewith, may cause the conviction to be drawn up according to the form in the Schedule (c.) to this Act annexed.* Former conviction.

This section has been repealed by the Statute Law Revision Act, 1892. See note to section 136, *ante*, p. 292.

Sect. 145. **145.** No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the superior courts.

Proceedings not to be quashed for want of form.

The effect of this section is that no proceeding before justices or inquisition before a jury can be set aside for want of regularity in the proceedings, for wrong admission of evidence, or for wrong direction to the jury, provided that the justices, sheriff, or jury have jurisdiction, or having it they do not exceed it. If they have no jurisdiction then, notwithstanding this section, the finding or verdict may be removed into the High Court by writ of *certiorari* and quashed. See this fully discussed in the notes to sections 37 and 50, *ante*, pp. 80 and 95; and see per HALSBURY, L.C., *Cowper Essex v. Acton Local Board*, 14 A. C. 153, p. 160.

For examples of irregularity, see *R. v. Sheffield, &c., Railway Company*, 11 A. & E. 194; *Reg. v. Bristol and Exeter Railway Company*, 11 A. & E. 202, note.

Excess of jurisdiction need not appear on the face of the proceedings, but may be shown by affidavit. *Re Penny*, 7 E. & B. 660.

Cases of no jurisdiction occur principally through the justices or presiding officer being interested as a shareholder or otherwise. See note to section 50, *ante*, p. 97.

As to interested justices, see section 3, note "Justices;" and see *R. v. London and North Western Railway Company*, 12 W. R. 208; *Ex parte Baddeley*, 5 R. C. 542; *Re Edmundson*, 17 Q. B. 67; *R. v. Commissioners of Cheltenham*, 1 Q. B. 467; *R. v. Aberdare Canal Company*, 14 Q. B. 854; *R. v. Rand*, L. R. 1 Q. B. 230.

Cases of excess of jurisdiction arise by reason of the jury assessing compensation in respect of items which are not a subject of compensation. *Penny v. South Eastern Railway Company*, 7 E. & B. 660. *Reg. v. London and North Western Railway Company*, 3 E. & B. 443; and note to section 50.

Parties allowed to appeal to quarter sessions on giving security.

146. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions [for the county or place in which the cause of appeal shall have arisen: but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal should be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient

wreties, before a justice, conditioned duly to prosecute such **Sect. 146.**
appeal, and to abide the order of the Court thereon.](a)

(a) These words are repealed as regards England by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4. See note to section 136, *ante*, p. 292.

As to procedure on appeals, see sections 31, 32 of the Summary Jurisdiction Act, 1879, and section 6 of the Summary Jurisdiction Act, 1884, and Baines's Act (12 & 13 Vict. c. 45).

As to justices stating a special case, see section 33 of the Summary Jurisdiction Act, 1879, and 20 & 21 Vict. c. 43.

147. At the quarter sessions for which such notice shall be given the Court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the Court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Court to make such order as they think reasonable.

148. Provided always [*and be it enacted*],(a) that notwithstanding anything herein or in the special Act, or any Act incorporated therewith contained, every penalty of forfeiture imposed by this or the special Act or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of Her present Majesty, intituled

Receiver of the metropolitan police district to receive penalties incurred within his district.

Sect. 148. *An Act for regulating the Police Courts in the Metropolis*, and 2 & 3 Vict. every order or conviction of any of the police magistrates in c. 71.

respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act ; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

(a) These words have been repealed by the Statute Law Revision Act, 1891.

Persons
giving
false
evidence
liable to
penalties
of perjury.

149. And be it enacted, that any person who upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

A person who makes an affirmation instead of taking an oath is liable to the same penalties. Oaths Act, 1888 (51 & 52 Vict. c. 46), s. 1.

And with respect to the provision to be made for affording access to the special Act by all parties interested, be it enacted as follows :(a)

Copies of
special Act
to be kept
and de-
posited,
and
allowed to
be in-
spected.

150. The company shall, at all times after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty, or some of them ; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also within the space of such six months deposit in the office of each of the clerks of the peace (b) of the several counties into which the works shall

extend a copy of such special Act so printed as aforesaid; **Sect. 150.**
 and the said clerks of the peace shall receive, and they and
 the company respectively shall retain, the said copies of the
 special Act, and shall permit all persons interested to inspect
 the same, and make extracts or copies therefrom, in the like
 manner, and upon the like terms, and under the like penalty
 for default, as is provided in the case of certain plans and
 actions by an Act passed in the first year of the reign of
 Her present Majesty, intituled *An Act to compel clerks of the* 7 Will. 4,
 and 1 Vict.
 c. 83.
peace for counties and other persons to take the custody of such
documents as shall be directed to be deposited with them under
the standing orders of either House of Parliament.

(a) Sections 150, 151.

(b) See "Definition," section 3, *ante*, p. 5.

151. If the company shall fail to keep or deposit as herein- Penalty on
company
failing to
keep or
deposit.
 before mentioned, any of the said copies of the special Act,
 they shall forfeit twenty pounds for every such offence, and
 also five pounds for every day afterwards during which such
 copy shall be not so kept or deposited.

152. And be it enacted that this Act shall not extend to Act not to
extend to
Scotland.
 Scotland.

153. [*And be it enacted, That this Act may be amended* Act
may be
amended
this
session.
or repealed by any Act to be passed in the present session of
Parliament.]

Repealed by the Statute Law Revision Act, 1875.

SCHEDULES referred to in the foregoing Act.

Form of Conveyance.

I of in consideration of the sum of
paid to me [or, as the case may be, into the Bank of England
[or Bank of Ireland], in the name and with the privity of the
Accountant-General of the Court of Chancery, ex parte "the
promoters of the undertaking" [naming them], or to A. B. of
and C. D. of two trustees appointed to receive
the same], pursuant to the [here name the special Act], by the
[here name the company or other promoters of the undertaking],
incorporated [or constituted] by the said Act, do hereby con-
vey to the said company [or other description], their successors
and assigns all [describing the premises to be conveyed], together
with all ways, rights, and appurtenances thereto belonging,
and all such estate, right, title, and interest in and to the same
as I am or shall become seised or possessed of, or am by the
said Act empowered to convey, to hold the premises to the
said company [or other description], their successors and
assigns, for ever, according to the true intent and meaning of
the said Act. In witness whereof I have hereunto set my
hand and seal, the day of in the year of our
Lord

Form of Conveyance on Chief Rent.

I of in consideration of the rent-charge to be paid to me, my heirs and assigns, as hereinafter mentioned, by "the promoters of the undertaking" [*naming them*], incorporated [*or constituted*] by virtue of the [*here name the special Act*], do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said Act, they the said company [*or other description*], their successors and assigns, yielding and

paying unto me, my heirs and assigns, one clear yearly rent Sched. C.
 of by equal quarterly [or half-yearly, as agreed upon],
 portions, henceforth, on the [stating the days], clear of all
 taxes and deductions. In witness whereof I hereunto set my
 hand and seal, the day of in the year of our
 Lord .

As to these forms of conveyance, see section 82, *ante*, p. 116.

SCHEDULE (C.)

Form of Conviction.

to wit.

*Be it remembered, that on the day of in the
 year of our Lord A. B. is convicted before us C., D., two
 of Her Majesty's justices of the peace for the county of
 [here describe the offence generally, and the time and place
 when and where committed], contrary to the [here name the
 special Act]. Given under our hands and seals, the day and
 year first above written.*

C., D.

This is the schedule referred to in section 144, which section with
 this schedule was repealed by the Statute Law Revision Act, 1892.
 See note to section 136.

THE RAILWAYS CLAUSES CONSOLIDATION ACT, 1845.

8 & 9 VICT. c. 20.

An Act for consolidating in One Act certain Provisions usually inserted in Acts authorising the making of Railways.

[8th May, 1845.]

Sect. 1. [*Whereas it is expedient to comprise in one general Act sundry provisions usually introduced into Acts of Parliament authorising the construction of railways, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: and whereas a Bill is now pending in Parliament, intituled An Act for consolidating in One Act certain Provisions usually inserted in Acts authorising the taking of Lands for Undertakings of a public Nature, and which is intended to be called "The Lands Clauses Consolidation Act, 1845:" May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same, that*](a) this Act shall apply to every railway which shall by any Act which shall hereafter be passed be authorised to be constructed, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act.

Operation
of this Act
confined
to future
railways.

(a) The recital has been repealed by the Statute Law Revision Act, 1891. As to incorporation, see section 5 of this Act, and cf. sections 1

and 5, *ante*, pp. 1 and 10, of the Lands Clauses Act, 1845, and see the notes to these sections and section 80 of that Act, *ante*, p. 195. Sect. 1.

And with respect to the construction of this Act and of other Acts to be incorporated therewith, be it enacted as follows : (a) Interpretations in this Act :

2. The expression "the Special Act," used in this Act, shall be construed to mean any Act which shall be hereafter passed authorising the construction of a railway, and with which this Act shall be so incorporated as aforesaid ; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act ; and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used ; and the expression "the lands" shall mean the lands which shall by the special Act be authorised to be taken or used for the purposes thereof ; and the expression "the undertaking" shall mean the railway and works, of whatever description, by the special Act authorised to be executed. "Special Act :"
"pre-scribed :"
"the lands :"
"the under-taking."

(a) This heading includes sections 2—5.

Compare this section with the similar provisions in section 2 of the Lands Clauses Act, 1845, *ante*, p. 4.

3. The following words and expressions, both in this and the special Act, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction ; (that is to say,) Interpretations in this and the special Act.

Words importing the singular number only shall include the plural number ; and words importing the plural number only shall include also the singular number : (a)

Words importing the masculine gender only shall include females : (a)

The word "lands" shall include messuages, lands, tenements, and hereditaments of any tenure : (a) "Lands :"

- Sect. 3.** The word "lease" shall include an agreement for a lease : (a)
- "Lease :"
- "Toll :"
- The word "toll" shall include any rate or charge or other payment payable under the special Act for any passenger, animal, carriage, goods, merchandise, articles, matters, or things conveyed on the railway :
- "Goods :"
- The word "goods" shall include things of every kind conveyed upon the railway :
- "Month :"
- The word "month" shall mean calendar month : (a)
- "Superior courts :"
- The expression "superior courts" shall mean Her Majesty's superior courts of record at
- Westminster*
- or
- Dublin*
- , as the case may require : (a)
- "Oath :"
- The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath : (a)
- "County :"
- The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town : (a)
- "the sheriff :"
- The word "sheriff" shall include under sheriff or other legally competent deputy ; and where any matter in relation to any lands is required to be done by any sheriff or clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate ; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate : (a)
- "the clerk of the peace."
- "Justice :"
- The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or

place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands, being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together : (a) Sect. 3.
"Two justices:"

Where under the provisions of this or the special Act any notice shall be required to be given to the owner of any lands, or where any Act shall be authorised or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special Act, or any Act incorporated therewith, would be enabled to sell and convey lands to the company : (a) "Owner:"

The expression "the company" shall mean the company or party which shall be authorised by the special Act to construct the railway : "the company:"

The expression "the railway" shall mean the railway and works by the special Act authorised to be constructed : "the railway:"

[The expression "the Board of Trade" shall mean the Lords of the Committee of Her Majesty's Privy Council appointed for trade and foreign plantations :] (b) "Board of Trade:"

The expression "the bank" shall mean the Bank of England where the same shall relate to moneys to be paid or deposited in respect of lands situate in England; and shall mean the Bank of Ireland, where the same shall relate to moneys to be paid or deposited in respect of lands situate in Ireland : (a) "the bank"

Sect. 3. The expression "turnpike road" shall, when applied to any road in *Ireland*, include any road upon which Her Majesty's mails are or shall be carried in mail carriages, or such other roads as the Commissioners of Public Works in *Ireland* shall consider to require arches of greater width or height than by this Act is required for public carriage roads :

"surveyor,"
Ireland : The expression "surveyor," applied to a road or highway, shall, as to railways in *Ireland* include the county surveyor :

"Overseers of the poor,"
Ireland. The expression "overseers of the poor" when applied to *Ireland* shall include the poor law guardians of the electoral division and the clerk of the guardians of the union through which such railway may pass.

(a) These definitions are the same as those in the Lands Clauses Act, 1845, s. 3. See the notes thereto, *ante*, p. 4.

(b) The definition of the Board of Trade was repealed by the Statute Law Revision Act, 1891, but a similar definition is given in the Interpretation Act, 1889, s. 12, as applicable to all Acts.

"The railway."—The definition of a railway in this Act includes all works authorised to be constructed, and will, therefore, include stations, yards, offices, and warehouses, and all other works the company may be authorised to construct. A railway company will, accordingly, be justified in taking land for these purposes although only a small portion may be required for the line itself. *Cotter v. Midland Railway Company*, 5 R. C. 187, p. 194.

The definition of a railway varies in the different Acts, but for the purpose of this subject the only other material definition is that of the Regulation of Railways Act, 1868, section 2 of which defines a railway as meaning "the whole or any portion of a railway or tramway whether worked by steam or otherwise."

Short title
of the
Act.

4. [And be it enacted, that] (a) in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Railways Clauses Consolidation Act, 1845."

(a) These words were repealed by the Statute Law Revision Act, 1891.

Form in
which por-
tions of
this Act

5. And whereas it may be convenient in some cases, to incorporate with Acts hereafter to be passed some portion only of the provisions of this Act : Be it therefore enacted,

that, for the purpose of making any such incorporation, it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter) shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

Sect. 5.
may be
incor-
porated in
other Acts.

See as to incorporation the notes to section 5 of the Lands Clauses Act, 1845, which is *verbatim* the same as this section, *ante*, p. 10.

And with respect to the construction of the railway and the works connected therewith, be it enacted as follows :

Under this heading are included sections 6—29.

6. In exercising the power given to the company by the special Act to construct the railway, and to take lands for that purpose, the company shall be subject to the provisions and restrictions contained in this Act and in the said Lands Clauses Consolidation Act ; and the company shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the railway, or injuriously affected by the construction thereof, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties by reason of the exercise, as regards such lands, of the powers by this or the special Act, or any Act incorporated therewith, vested in the company ; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands Clauses Consolidation Act, for determining questions of compensation with regard to lands purchased or taken under the provisions thereof ; and

The construction of the railway to be subject to the provisions of this Act and the Lands Clauses Consolidation Act.

Sect. 6. all the provisions of the said last-mentioned Act shall be applicable to determining the amount of any such compensation, and to enforcing the payment or other satisfaction thereof.

“In exercising the power.”—It should be noted that when companies and other public bodies are authorised by special Act to execute certain works that the special Acts so authorising them are usually merely enabling Acts, and there are rarely provisions compelling the promoters to complete or to carry on the authorised undertaking. In the absence of such compulsory provisions a railway company will not be bound to serve notices to treat, and a *mandamus* will not lie to compel the company to proceed under the Act, even although part of the line may have been completed. *Reg. v. York and North Midland Railway Company*, 1 E. & B 158. The same principle has been applied to an act authorising trustees to make a ferry and roads thereto. *Reg. v. French*, 4 Q. B. D. 507.

Undertakers will not, therefore, be ordered to construct a line of railway, although they may have entered into an agreement with a landowner when the bill was before Parliament agreeing to take certain of his land at a fixed price to be paid at the date at which they began to execute the line. *Edinburgh, Perth, and Dundee Railway Company v. Philip*, 2 Macq. 214. Nor will they be compelled to specifically perform an agreement for the purchase of land which they had contracted to purchase for the purposes of the line, but which as they had relinquished the undertaking they no longer required. *Scottish North Eastern Company v. Stewart*, 3 Macq. 382.

And even where a railway company have made the line and opened it for traffic, they will not be bound to maintain and keep it open if there are no words in their Act requiring them so to do. *Reg. v. Great Western Railway Company*, 69 L. T. 572.

In the earlier case of *R. v. Severn and Wye Railway Company*, 2 B. & Ald. 646, the company were required by the special Act to execute the works. See this case explained in *Reg. v. Great Western Railway Company*, 69 L. T. 572. For a provision requiring one part of a line to be completed before another is opened, see *Cromford and High Peak Railway Company v. Stockport, &c., Railway Company*, 1 De G. & J. 326.

“Full Compensation for the value of the Land taken or used.”—When land is taken, regard must be had in assessing the compensation to (1) the value of the land ; (2) the damage by reason of severance of the lands taken from other lands of the same owner held therewith ; and (3) any other injurious affection of such lands. See sections 49 and 63 of the Lands Clauses Consolidation Act, 1845, and the notes to the latter section, *ante*, pp. 95 and 110. The same principles of compensation have been applied under the Lands Clauses Act, 1845, and under this Act when land is taken.

As to compensation when land is merely used temporarily, see *infra*, sections 30—44.

“To take lands for that purpose.”—The purpose is the construction of the railway, and “railway” by the definition in section 3 includes the works authorised to be constructed including stations,

warehouses, offices, and other buildings mentioned in section 16 of this Act. *Cotter v. Midland Railway Company*, 5 R. C. 187. **Sect. 6.**

Lands required for accommodation works (see sections 16 and 68, *infra*, and notes thereto) are lands required for the purposes of "the undertaking" or of "the railway," and may be taken compulsorily. *Wilkinson v. Hull, &c., Railway and Dock Company*, 20 Ch. D. 323.

A company can only take such lands as they require for the undertaking, and it must be land that they are authorised to take. See notes to section 18 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 34.

As to the temporary occupation of lands, see sections 30—44.

The word "lands" here includes mines, so that if mines are required for the purposes of the undertaking the company may take them compulsorily under this section notwithstanding the provisions in this Act as to taking the surface only (*Errington v. Metropolitan District Railway Company*, 19 Ch. D. 559), and if they are taken compensation in respect thereof is payable in the same manner as in other cases. *Smith v. Great Western Railway Company*, 3 App. Cas. 165.

Where a railway company are empowered to appropriate and use the subsoil under an owner's land without in any way disturbing the surface, they are thereby empowered to take "land," and cannot enter upon and remove this sub-soil without complying with the provisions of the Lands Clauses Act. *Farmer v. Waterloo and City Railway Company* (1896), 1 Ch. 527.

See also the definition of "Lands" in section 3 of the Lands Clauses Consolidation Act, 1845, and the notes thereto, *ante*, p. 7.

"For all damage sustained."—This refers only to damage to land or to some interest in land, and does not include personal damages. The damage referred in section 16 is of the same nature as that under this section, and there would appear to be no substantial difference between the language of the 68th section of the Lands Clauses Act, 1845, and section 6 of this Act. *Ricket v. Metropolitan Railway Company*, L. R. 2 H. L. 175, pp. 189, 197, and see *Hammersmith Railway Company v. Brand*, L. R. 4 H. L. 171; *Metropolitan Board of Works v. McCarthy*, L. R. 7 H. L. 243.

In one case where a house was injuriously affected a large claim for damage to the goods of the occupant was allowed under this section as being covered by the words "all damage sustained." It does not appear in what way they came to be injured, but it would seem that the injury to the goods was the result of injuriously affecting the house. *Knock v. Metropolitan Railway Company*, L. R. 4 C. P. 131. If such injury was the direct and natural result of the injurious affection, damages in respect thereof might probably have been given under section 68 of the Lands Clauses Act, 1845. See note thereto "The measure of compensation," *ante*, p. 141.

7. If any omission, mis-statement, or erroneous description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, described on the plans or books of reference mentioned in the special Act, or in the Schedule to the special Act, it shall be lawful for the company, after giving ten days' notice to the owners of the lands affected by such proposed correction, to apply to two justices

Errors and omissions in plans to be corrected.

Sect. 7. for the correction thereof ; and if it shall appear to such justices that such omission, mis-statement, or erroneous description arose from mistake, they shall certify the same accordingly, and they shall in such certificate state the particulars of any such omission, and in what respect any such matter shall have been mis-stated or erroneously described ; and such certificate shall be deposited with the clerks of the peace of the several counties in which the lands affected thereby shall be situate, and shall also be deposited with the parish clerks of the several parishes in *England*, and with the postmasters of the post towns in or nearest to such parishes in *Ireland*, in which the lands affected thereby shall be situate ; and such certificate shall be kept by such clerks of the peace, parish clerks, and postmasters respectively along with the other documents to which they relate ; and thereupon such plan, book of reference, or schedule shall be deemed to be corrected according to such certificate ; and it shall be lawful for the company to make the works in accordance with such certificate.

As the special Act authorises the company to take lands by reference to the plans and books of reference, it is most material that they should be accurate. See the Lands Clauses Consolidation Act, 1845, s. 18, note, *ante*, p. 38.

The intention of the legislature in regard to the plans and book of reference would appear to be that the land should be clearly identified, and the difficulty, intended to be corrected by this section, is the omission either of the land in the plan or of the owner in the book of reference which would render identification difficult, or the omission of the number or of the acreage. The description is not intended to be entirely accurate, and the absence of the names of intermediate lessees for a long term, will not prevent the company taking the land without having the omission corrected under this section. *Kemp v. West End of London, &c., Railway Company*, 1 K. & J. 681.

Works not to be proceeded with until plans of all alterations authorised by parliament have been deposited.

8. It shall not be lawful for the company to proceed in the execution of the railway unless they shall have previously to the commencement of such work deposited with the clerks of the peace of the several counties in or through which the railway is intended to pass a plan and section of all such alterations from the original plan and section as shall have been approved of by Parliament, on the same scale and

containing the same particulars as the original plan and section of the railway, and shall also have deposited with the clerks of the several parishes in *England*, and the post-masters of the post towns in or nearest to such parishes in *Ireland*, in or through which such alterations shall have been authorised to be made, copies or extracts of or from such plans and sections as shall relate to such parishes respectively. Sect. 8.

Although cross sections may be shown on the plans, there is nothing in this Act to render them binding on the company, and, unless required by the special Act, the company may alter them without making the deposits mentioned in this section. See *Reg. v. Caledonian Railway Company*, 16 Q. B. 19.

9. The said clerks of the peace, parish clerks, and post-masters shall receive the said plans and sections of alterations, and copies and extracts thereof respectively, and shall retain the same, as well as the said original plans and sections, and shall permit all persons interested to inspect any of the documents aforesaid, and to make copies and extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of the original plans and sections by [an Act passed in the First year of the reign of Her present Majesty, intituled *An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.*](a) Clerks of the peace, &c., to receive plans of alterations, and allow inspection. 7 Will. 4 and 1 Vict. c. 88.

(a) That Act is now called "The Parliamentary Deposit Act, 1837." See the Short Titles Act, 1892 (55 Vict. c. 10).

10. True copies of the said plans and books of reference, or of any alteration or correction thereof, or extract therefrom, certified by any such clerk of the peace, which certificate such clerk of the peace shall give to all parties interested when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof. Copies of plans, &c. to be evidence.

11. In making the railway it shall not be lawful for the company to deviate from the levels of the railway, as Limiting deviation from

Sect. 11. referred to the common datum line described in the section datum line approved of by Parliament, and as marked on the same, to any extent exceeding in any place five feet, or, in passing through a town, village, street, or land continuously built upon, two feet, without the previous consent in writing of the owners and occupiers of the land in which such deviation is intended to be made; or in any case street or public highway shall be affected by such deviation, then the same shall not be made without the like consent of the trustees or commissioners having the control of such street or public highway, or, if there be no such trustees or commissioners, without the like consent of two or more justices of the peace in petty sessions assembled for that purpose, and acting for the district in which such street or public highway may be situated, or without the like consent of the commissioners for any public sewers, or the proprietors of any canal, navigation, gasworks, or waterworks affected by such deviation: Provided always, that it shall be lawful for the company to deviate from the said levels to a further extent without such consent as aforesaid, by lowering solid embankments or viaducts, provided that the requisite height of headway as prescribed by Act of Parliament be left for roads, streets, or canals passing under the same: Provided also, that notice of every petty sessions to be holden for the purpose of obtaining such consent of two justices as is hereinbefore required shall, fourteen days previous to the holding of such petty sessions, be given in some newspaper circulating in the county, and also be affixed upon the door of the parish church in which such deviation or alteration is intended to be made, or, if there be no church, some other place to which notices are usually affixed.

Proviso.

Proviso.

In the case of railways whose Acts incorporate Part 1 of the Railways Clauses Act, 1863 (26 & 27 Vict. c. 92), further powers of deviation from the line or level are allowed in the case of an arch, tunnel, or viaduct. See section 4 thereof, *post*.

"Town."—Town in this section means a collection of inhabited houses so reasonably near that they may be said to be continuous, and it will include a space of open ground surrounded by continuous houses.

Elliot v. South Devon Railway Company, 2 Ex. 725. See also note **Sect. 11.**
 "Town" in the notes to sections 93 and 128 of the Lands Clauses
 Act, 1845, *ante*, pp. 245 and 282.

12. Before it shall be lawful for the company to make any greater deviation from the level than five feet, or in any town, village, street, or land continuously built upon, two feet, after having obtained such consent as aforesaid, it shall be incumbent on the company to give notice of such intended deviation by public advertisement, inserted once at least in two newspapers, or twice at least in one newspaper, circulating in the district or neighbourhood where such deviation is intended to be made, three weeks at least before commencing to make such deviation; and it shall be lawful for the owner of any lands prejudicially affected thereby, at any time before the commencement of the making of such deviation, to apply to the Board of Trade, after giving ten days' notice to the company, to decide whether, having regard to the interests of such applicants, such proposed deviation is proper to be made; and it shall be lawful for the Board of Trade, if they think fit, to decide such question accordingly, and by their certificate in writing either to disallow the making of such deviation or to authorise the making thereof, either simply, or with any such modification as shall seem proper to the Board of Trade; and after any such certificate shall have been given by the Board of Trade it shall not be lawful for the company to make such deviation, except in conformity with such certificate.

Public notice to be given previous to making greater deviations.
Power to the owners of adjoining lands to appeal to the Board of Trade against such deviations.

Where a railway company were building an embankment to carry the line over a road and building it much more than five feet above the level within the meaning of this and the 11th section, and had obtained the consent required by the 11th section, but had not given the notice required by this section, on the application of an owner, who claimed that his house would be prejudicially affected, for an injunction, the Court put the company on terms to take the opinion of the Board of Trade and to submit to such order as the Court should thereafter make. *Pearce v. Wycombe Railway Company*, 1 Dr. 244.

13. Where in any place it is intended to carry the railway on an arch or arches or other viaduct, as marked on the said plan or section, the same shall be made accordingly,

Arches, tunnels, &c., to be made as

Sect. 13. and where a tunnel is marked on the said plan or section as intended to be made at any place, the same shall be made accordingly, unless the owners, lessees, and occupiers of the land in which such tunnel is intended to be made shall consent that the same shall not be so made.

marked on
deposited
plans.

Under Acts incorporating Part I. of the Railways Clauses Act, 1863 (26 & 27 Vict. c. 92), deviations from the line or level may be made in the case of arches, viaducts, and tunnels and other engineering works may be substituted with the consent of the Board of Trade. Section 4, *post*. Prior to that statute the structures and works had to be executed according to the plans. See, for example, *Little v. Newport, &c., Railway Company*, 12 C. B. 752; *Attorney-General v. Tewkesbury, &c., Railway Company*, 32 L. J. Ch. 482.

Limiting
deviations
from gra-
dients,
curves, &c.

14. It shall not be lawful for the company to deviate from or alter the gradients, curves, tunnels, or other engineering works described in the said plan or section, except within the following limits, and under the following conditions; (that is to say,)

Subject to the above provisions in regard to altering levels, it shall be lawful for the company to diminish the inclination or gradients of the railway to any extent, and to increase the said inclination or gradients as follows; (that is to say,) in gradients of an inclination not exceeding one in a hundred, to any extent not exceeding ten feet *per* mile, or to any further extent which shall be certified by the Board of Trade to be consistent with the public safety, and not prejudicial to the public interest; and in gradients of or exceeding the inclination of one in a hundred, to any extent not exceeding three feet *per* mile, or to any further extent which shall be so certified by the Board of Trade as aforesaid:

It shall be lawful for the company to diminish the radius of any curve described in the said plan to any extent which shall leave a radius of not less than half a mile, or to any further extent authorised by such certificate as aforesaid from the Board of Trade:

It shall be lawful for the company to make a tunnel, not Sect. 14.
 marked on the said plan or section, instead of a cutting,
 or a viaduct instead of a solid embankment, if
 authorised by such certificate as aforesaid from the
 Board of Trade.

This section is only applicable to works on the line of railway itself and does not apply to collateral works, such as cross roads or bridges for carrying such roads over the line. *Reg. v. Caledonian Railway Company*, 16 Q. B. 19, p. 31. There is, therefore, no restriction as to the powers of the company to alter the level of the approaches to a bridge over which a road was carried, provided the land affected is included in the plans and book of reference, and full satisfaction is made to the owners. *Beardmer v. London and North Western Railway Company*, 1 McN. & G. 112.

A bridge carrying the railway over a road is part of the line and is an engineering work within this section. *Attorney-General v. Tewkesbury Railway Company*, 32 L. J. Ch. 482.

15. It shall be lawful for the company to deviate from Lateral
deviations.
 the line delineated on the plans so deposited, provided that
 no such deviation shall extend to a greater distance than
 the limits of deviation delineated upon the said plans, nor
 to a greater extent in passing through a town, village, or
 lands continuously built upon than ten yards, or elsewhere
 to a greater extent than one hundred yards from the said
 line, and that the railway by means of such deviation be
 not made to extend into the lands of any person, whether
 owner, lessee, or occupier whose name is not mentioned in
 the books of reference, without the previous consent in
 writing of such person, unless the name of such person shall
 have been omitted by mistake, and the fact that such omission
 proceeded from mistake shall have been certified in manner
 herein or in the special Act provided for in cases of uninten-
 tional errors in the said books of reference.

"To Deviate."—Deviation in its ordinary and natural sense and in the sense in which it has been used in Acts of Parliament, means shifting the work in its integrity from one site to another which may be deemed more suitable. It does not imply a right, not only to alter the situation of the work, but in doing so to dispense with part of it. *Herron v. Rathmines and Rathgar Improvement Commissioners* [1892], A. C. 498, pp. 517, 518.

Sect. 15. The expression "deviation" in this section is to be taken with reference to the line of railway only, and not to lands required for collateral purposes. *Doe d. Armitstead v. North Staffordshire Railway Company*, 16 Q. B. 526, p. 537. Lands outside the limits of deviation may, therefore, be taken if required. *Crawford v. Chester and Holyhead Railway Company*, 11 Jur. 917; *Finck v. London and South Western Railway Company*, 44 Ch. D. 330, and see notes to section 18 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 39.

"From the line delineated."—On the deposited plans, the ordinary mode is to lay down the line of railway by making a dark line along what is proposed to be the centre of the railway and then to make dotted lines outside to mark the limits of deviation, which limits are fixed. The deviation referred to in this section is from that dark line, i.e., from the middle of the original line of railway, and in calculating that deviation the distance is measured from the line of the railway as actually laid down to the *medium filum viæ* of the original railway as shown on the plan. *Doe d. Armitstead v. North Staffordshire Railway Company*, 16 Q. B. 961; *Doe d. Payne v. Bristol and Exeter Railway Company*, 6 M. & W. 320; *Finck v. London and South Western Railway Company*, 44 Ch. D. 330, pp. 337, 338.

The power of deviation does not extend to the widening of an existing line; a company empowered to widen their line cannot make the widening one hundred yards from the existing line. *Finck v. London and South Western Railway Company*, 44 Ch. D. 330.

An agreement made with a landowner as to making certain approaches to his property, in consideration of his not opposing the projected railway, will not prevent the company from deviating so that the line of approach will require to be altered. *Wood v. Staffordshire Railway Company*, 1 McN. & G. 278.

If the line is constructed beyond the limits of deviation, a landowner, on part of whose land the line beyond the limits is constructed, has no remedy by action in respect thereof if his lands are included in the parliamentary plans and are reasonably necessary for the completion of the company's works, unless he can show that he has suffered special damage. If the public are injured, the Attorney-General might apply to the Court to restrain the deviation. *Finck v. London and South Western Railway Company*, 44 Ch. D. 330, p. 350, and see *Watkins v. Great Northern Railway Company*, 16 Q. B. 961.

If the company keep within the limits of deviation, an information will not lie at the suit of the Attorney-General to restrain them because of an apprehension that great inconvenience and risk will be caused to the public, unless the company can be shown to have used their powers capriciously. *Attorney-General v. Great Western Railway Company*, 14 W. R. 726.

"Town."—See section 11 of this Act, note "Town," and see notes to sections 93 and 128 of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 245, 283.

Works to
be exe-
cuted.

16. Subject to the provisions and restrictions in this and the special Act, and any Act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith,

hereinafter mentioned, to execute any of the following works ; Sect. 16.
(that is to say,)

They may make or construct in, upon, across, under, or Inclined planes, &c.
over any lands, or any streets, hills, valleys, roads, rail-
roads, or tramroads, rivers, canals, brooks, streams, or
other waters, within the lands described in the said plans
or mentioned in the said books of reference or any cor-
rection thereof, such temporary or permanent inclined
planes, tunnels, embankments, aqueducts, bridges, roads,
ways, passages, conduits, drains, piers, arches, cuttings,
and fences as they think proper ;

They may alter the course of any rivers not navigable, Alteration of course of rivers, &c.
brooks, streams, or watercourses, and of any branches of
navigable rivers, such branches not being themselves
navigable, within such lands, for the purpose of con-
structing and maintaining tunnels, bridges, passages, or
other works over or under the same, and divert or alter,
as well temporarily as permanently, the course of any
such rivers or streams of water, roads, streets, or ways,
or raise or sink the level of any such rivers or streams,
roads, streets, or ways, in order the more conveniently to
carry the same over or under or by the side of the rail-
way, as they may think proper ;

They may make drains or conduits into, through, or under Drains, &c.
any lands adjoining the railway, for the purpose of con-
veying water from or to the railway ;

They may erect and construct such houses, warehouses, Ware-
houses, &c.
offices, and other buildings, yards, stations, wharfs,
engines, machinery, apparatus, and other works and con-
veniences as they think proper ;

They may from time to time alter, repair, or discontinue Alterations and repairs.
the before-mentioned works or any of them, and sub-
stitute others in their stead ; and

They may do all other Acts necessary for making, main- General power.
taining, altering, or repairing, and using the railway :

Provided always, that in the exercise of the powers by this or Provided as to damages.

Sect. 16. the special Act granted the company shall do as little damage as can be, and shall make full satisfaction in manner herein and in the special Act, and any Act incorporated therewith, provided, to all parties interested for all damage by them sustained by reason of the exercise of such powers.

“For the purpose of constructing the Railway.”—The powers given in this section are subject to the provisions as to making compensation for the land taken and for the damage caused by these works. If the lands are required for any of the purposes of this section the company may take them, provided they are lands authorized to be taken. Thus they may take lands outside the limits of deviation for the purpose of making a station. *Cother v. Midland Railway Company*, 5 R. C. 187. They may take land within the limits of deviation for the purpose of making a communication by a line of rails between the railway and a river (*Sadd v. Maldon, &c., Railway Company*, 6 Ex. 143), and for the purpose of making a new public footpath in substitution for an old one. *Rangeley v. Midland Railway Company*, 3 Ch. 306. As to what lands are authorised to be taken, and as to what are the purposes of an undertaking, see notes to section 18 of the Lands Clauses Consolidation Act, 1845, p. 34, *et seq.*

If the company enter upon the land for the purpose of constructing any of the works before making compensation, they will be liable to be restrained by injunction. *Ramsden v. Manchester, &c., Railway Company*, 2 Ex. 723; *Rangeley v. Midland Railway Company*, 3 Ch. 306, and cases cited in the notes to section 84 of the Lands Clauses Act, 1845.

“Or the Accommodation Works.”—The accommodation works which a railway company are required to make will be found in section 68, *post*. Lands required for accommodation works are lands required for the purposes of the railway, and the company may take lands compulsorily for such works. *Wilkinson v. Hull, &c., Railway and Dock Company*, 20 Ch. D. 323, and see *Beardmer v. London and North Western Railway Company*, 1 McN. & G. 112. If they have taken land for the purpose of the railway itself and afterwards use it for accommodation works, they will be entitled to retain it. *Lord Beauchamp v. Great Western Railway Company*, 3 Ch. 745. The lands may be taken for accommodation purposes, even although the owner objects and does not desire the accommodation, if such accommodation is reasonably necessary. *Dowling v. Pontypool, &c., Railway Company*, 18 Eq. 714.

Sub-section I.—The first clause of this section is not limited by the second so as to prevent the company partially impeding the course of a navigable river, as the promoters are authorised to execute their works in navigable rivers. They cannot, however, permanently or temporarily, divert or alter the whole of such a river. *Abraham v. Great Northern Railway Company*, 16 Q. B. 586.

Under similar provisions in a special Act a railway company was held entitled to make temporary bridges over a canal, and in so doing to drive piles into it for the purpose of taking earth over, although subsequent provisions dealing with bridges for carrying the railway over

the canal prevented the company from doing anything to obstruct the navigation. *London and Birmingham Railway Company v. Grand Junction Canal*, 1 R. C. 224. Notwithstanding provisions as to permanent bridges temporary ones may be erected if reasonably required. *Priestley v. Manchester and Leeds Railway Company*, 2 R. C. 134. Sect. 16.

Sub-section II.—Diversion of Roads and Rivers.—Although railway companies are authorised to divert roads and rivers “as they may think proper,” the Courts have construed the section as a whole. The works must be done for the purpose of constructing the railway, according to the beginning of the section, and they must be “necessary for making” the railway according to the last sub-section. The discretion vested in the railway company is limited by the fact that the diversion must be necessary and not merely more convenient or economical. Thus if a railway crosses the bend of a road in two places the company cannot divert the road and make it go alongside the railway and thereby cut off the bend merely to save the expense of taking the road under or over the railway. *Reg. v. Wycombe Railway Company*, L. R. 2 Q. B. 310, and see the same principle in *Fenwick v. East London Railway Company*, 20 Eq. 544, p. 550; *Morris v. Tottenham and Forest Gate Railway Company* (1892), 2 Ch. 45; *Lamb v. North London Railway Company*, 4 Ch. 522, 527. In *Pugh v. Golden Valley Company*, 12 Ch. D. 274, FRY, J., applied the same principle, although apparently without approval, to a case where a railway company proposed to divert a river in order to obviate the necessity of crossing it twice with bridges. When a railway crosses a highway without diverting it, the crossing must be by bridge (see section 46); but if the road must be diverted, either horizontally or vertically, the railway company may exercise their option and carry the road alongside the railway to a level crossing if this method is as commodious to the public as crossing it by bridges. *Attorney-General v. Ely, &c., Railway Company*, 4 Ch. 194, p. 200.

Where a railway company proposed to carry a road over the line by means of a square bridge which would necessitate the road being deviated, and it appeared that a skew bridge would carry the road over without deviation, the Court granted an injunction restraining the company from impeding the course of the road, and directed the matter to be referred to a competent person to inquire and certify whether any deviation was necessary, and if so, how it might best be carried out. *Attorney-General v. Dorset Central Railway Company*, 3 L. T. (N.S.) 608.

As to crossing roads and other interference therewith, see sections 46—66, *infra*. A road may be permanently diverted, if necessary, for the construction of the railway (*Phillips v. London, Brighton, and South Coast Railway Company*, 4 Giff. 46), and if it is so diverted and a new road substituted the old road will revert to the original owner. *Marquis of Salisbury v. Great Northern Railway Company*, 28 L. J. C. P. 40.

A company may take land of an owner in order to divert a road so as to diminish the obstruction to his property, although the owner objects and does not desire the diversion, provided such diversion is reasonable. *Dowling v. Pontypool, &c., Railway Company*, 18 Eq. 714.

The remedy for a wrongful diversion of a road may be for a *mandamus* to compel the company to carry the road over the railway or the railway over the road (*Reg. v. Wycombe Railway Company*, L. R. 2 Q. B. 310), or by an action for a declaration of the plaintiff's rights and an in-

Sect. 16. junction that these rights shall not be infringed (*Pugh v. Golden Valley Railway Company*, 12 Ch. D. 274), or by information at the suit of the Attorney-General, praying for an injunction and that the company may be ordered to make all necessary bridges and other works. *Attorney-General v. Ely, &c., Railway Company*, 4 Ch. 194.

"All other Acts necessary."—The works if they are to cause a nuisance or otherwise injure the property of neighbours must be necessary, and not merely convenient and more economical to the company. Thus the erection and working of a mortar mill causing a nuisance will be restrained by injunction, although the company can thereby make the mortar more cheaply than they can buy it (*Fenwick v. East London Railway Company*, 20 Eq., 544), following the principles laid down in the cases as to diversions of roads.

Generally, however, where an Act of Parliament authorises the execution of certain works, that authority includes everything reasonably necessary for the execution of the works. *Harrison v. Southcark and Vauxhall Water Company* (1891), 2 Ch. 409.

A railroad joining the line of another company with the line being constructed for the purpose of more conveniently conveying material for constructing the new line is not "necessary." *Morris v. Tottenham and Forest Gate Railway Company* (1892), 2 Ch. 47.

"As little Damage as can be."—This expression does not imply that the work when done shall cause as little damage as can be, but that in the execution of the work as little damage as possible shall be done. *Reg. v. East and West India Docks, &c., Railway Company*, 2 E. & B. 466. If the works are not necessary, the mere fact that they have been done in such a way as to cause the least possible damage will be no answer to an action for injunction. *Fenwick v. East London Railway Company*, 20 Eq. 544, p. 549. But if the works are necessary, it is left to the option of the company how they shall carry them out, and if they act with *bona fides* they will not be restrained, because they might have constructed works which would cause less inconvenience to private persons. *Reg. v. East and West India Dock Company*, 2 E. & B. 466; *Birmingham Waterworks Company v. London and North Western Railway Company*, 4 L. T. (N.S.) 398; *Attorney-General v. Ely, &c., Railway Company*, 4 Ch. 194; *London, Brighton, and South Coast Railway Company v. Truman*, 11 A. C. 45. The same principle is applicable to all statutory undertakings (see, for example, *Roderick v. Aston Local Board*, 5 Ch. D. 328), unless there is a limitation on the exercise of the power. *Metropolitan Asylum District v. Hill*, 6 A. C. 193. But when lands are required for temporary purposes the owner may require the company to take other land as more convenient. Sections 31 and 35, *infra*.

Subsidence.—As the company have the option of determining what works they shall construct, they must in the construction do as little damage as can be, and must take steps to prevent injury to adjacent property. Thus, in making a tunnel, they ought to underpin, or take other means to prevent the subsidence of houses and buildings adjacent (*Freehold General Land Company v. Metropolitan District Railway Company*, 14 L. T. (N.S.) 96), and generally in making a railway the company ought to take reasonable precautions not to injure adjoining houses. If they do not take such precautions the Court will grant an injunction restraining the negligent use of their powers, and will appoint a

surveyor to report as to what is necessary to secure the premises, and will order an inquiry as to damages. *Biscoe v. Great Eastern Railway Company*, 16 Eq. 636. Sect. 16.

Floods.—The company must also execute their works so as to prevent damage by flooding, if they can do so by exercising proper caution. *Geddis v. Proprietors of Bann Reservoir*, 3 A. C. 430; *Lawrence v. Great Northern Railway Company*, 16 Q. B. 643; and see *Attorney-General v. Furness Railway Company*, 38 L. T. (N.S.) 555. If in diverting a brook sufficient drains are not made, so that a mine is afterwards flooded, an action will lie against the company. *Bagnall v. London and North Western Railway Company*, 7 H. & N. 423.

Obstructing Rivers.—If under a special Act a company are authorised to make bridges over rivers or brooks, and there are no special provisions as to such bridges, the company will be restrained from erecting bridges of such height and dimensions as will interfere with the rights of the public or of private individuals, unless the railway cannot be constructed except by constructing such bridges. *Manseer v. North Eastern Railway Company*, 2 R. C. 380; *Coats v. Clarence Railway Company*, 1 R. & M. 181.

"Make full Satisfaction."—The principles of compensation for injuriously affecting land will be found in the notes to section 68, *ante*, p. 129, of the Lands Clauses Act, 1845; and see note to section 6 of this Act, *supra*, p. 307.

It may be here noticed that the Railway Regulation Act, 1842 (5 & 6 Vict. c. 55), ss. 14, 15, gives power to railway companies to enter upon and to take land for the purpose of repairing accidents, and for purposes of safety, making full compensation in respect thereof.

The Railway Regulation Act, 1842.

14. And whereas it is essential for the public safety and also for the proper maintenance of railways in a state of efficiency for the public service, that railway companies should have the power in case of accidents or slips happening or being apprehended to their cuttings and embankments or other works, to enter upon the lands adjoining their respective railways for the purpose of repairing or renewing the same, and to do such works as may be necessary for the purpose: Be it therefore enacted, that it shall be lawful for the lords of the said committee(a) to empower any railway company, in case of any accident or slip happening or being apprehended to any cutting, embankment, or other work belonging to them, to enter upon any lands adjoining their railway for the purpose of repairing or preventing such accident, and to do such works as may be necessary for the purpose: Provided always, that in case of necessity it shall be lawful for any railway company to enter upon such lands and do such works as aforesaid, without having obtained the previous sanction of the lords of the said committee;(a) but in every such case such railway company shall, within forty-eight hours after such entry, make a report to the lords of the said committee, specifying the nature of such accident or apprehended accident, and of the works necessary to be done, and such powers shall cease and determine if the lords of the said committee(a) shall, after considering the said report, certify that their exercise is not necessary for the public

Sect. 16. safety: Provided also, that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of, and shall be executed with all possible dispatch; and full compensation shall be made to the owners and occupiers of such lands for the loss or injury or inconvenience sustained by them respectively by reason of such works, the amount of which compensation in case of any dispute about the same shall be settled in the same manner as cases of disputed compensation are directed to be settled by the Acts relating to the railway on which such works may become necessary: Provided always, that no land shall be taken permanently by any railway company for such works without a certificate from the lords of the said committee(a) as hereinafter described.

(a) The Board of Trade.

Compulsory powers of taking land for the purposes of railways extended, where thought necessary for safety by Board of Trade.

15. And whereas by various Acts relating to railways compulsory powers are given to railway companies of purchasing and taking lands for the construction of such railways, and it is provided that such compulsory powers shall not be exercised after the expiration of certain limited periods from the passing of the said Acts: And whereas it is sometimes found necessary for the public safety that additional land should be taken after the expiration of such periods for the purpose of giving increased width to the embankments and inclination to the slopes of railways, or for making approaches to bridges or archways, or for doing such works for the repair or prevention of accidents as are hereinbefore described: Be it therefore enacted, that, in every case in which the lords of the said committee shall certify that the public safety requires additional land to be taken by any railway company for such purposes as aforesaid, the compulsory powers of purchasing and taking land contained in the Act or Acts of such railway company, together with all the clauses and provisions relative thereto, shall as regards such portion or portions of land as are mentioned in the certificate of the lords of the said committee, revive and be in full force for such further period as shall be mentioned in such certificate: Provided always, that any railway company applying to the lords of the said committee for any such certificate shall give fourteen days' notice in writing, in the manner prescribed by the Act or Acts of such company for serving notices on landowners, of their intention to make such application to all the parties interested in such lands, or such of them as shall be known to the company, and shall state in such notices the particulars of the land required; and if any of such parties interested shall apply within the said period of fourteen days to the lords of the said committee, such party shall be heard by them before any such certificate is given: Provided also, that where any such application shall have been made by any railway company to the lords of the said committee, upon which application any such certificate shall have been refused, the directors of such railway company shall, if required by the lords of the said committee, repay to the party resisting such application any expenses which he or they may have incurred in resisting such application.

Works below highwater mark not

17. It shall not be lawful for the company to construct on the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, where and so far

up the same as the tide flows and reflows, any work, or to **Sect. 17.**
 construct any railway or bridge across any creek, bay, arm of the sea, or navigable river, where and so far up the same as the tide flows and reflows, without the previous consent of Her Majesty [*her heirs and successors*], (a) to be signified in writing under the hands of two of the commissioners of Her Majesty's woods, forests, land revenues, works, and buildings, and of the lord high admiral of the United Kingdom of *Great Britain and Ireland*, or the commissioners for executing the office of lord high admiral aforesaid for the time being, to be signified in writing under the hand of the Secretary of the Admiralty, and then only according to such plan and under such restrictions and regulations as the said commissioners of Her Majesty's woods, forests, land revenues, works, and buildings, and the said lord high admiral, or the said commissioners, may approve of, such approval being signified as last aforesaid; and where any such work, railway, or bridge shall have been constructed it shall not be lawful for the company at any time to alter or extend the same without obtaining, previously to making any such alteration or extension, the like consents or approvals; and if any such work, railway, or bridge shall be commenced or completed contrary to the provisions of this Act, it shall be lawful for the said commissioners of Her Majesty's woods, forests, land revenues, works, and buildings, or the said lord high admiral, or the said commissioners for executing the office of lord high admiral, to abate and remove the same, and to restore the site thereof to its former condition at the cost and charge of the company; and the amount thereof may be recovered in the same manner as a penalty is recoverable against the company.

(a) Repealed by the Statute Law Revision Act, 1891.

The above section is now to be read as if the name of the Board of Trade were inserted instead of the lord high admiral or the commissioners for executing that office. Harbours Transfer Act, 1862 (25 & 26 Vict. c. 69), ss. 2, 6.

18. It shall be lawful for the company, for the purpose of constructing the railway, to raise, sink, or otherwise alter the

Alteration
of water
and gas
pipes, &c.

Sect. 18. position of any of the watercourses, water pipes, or gas pipes belonging to any of the houses adjoining or near to the railway, and also the mains and other pipes laid down by any company or society who may furnish the inhabitants of such houses or places with water or gas, and also to remove all other obstructions to such construction, so as the same respectively be done with as little detriment and inconvenience to such company, society, or inhabitants as the circumstances will admit, and be done under the superintendence of the company to which such water pipes or gas pipes belong, and of the several commissioners or trustees, or persons having control of the pavements, sewers, roads, streets, highways, lanes, and other public passages and places within the parish or district where such mains, pipes, or obstructions shall be situate, or of their surveyor, if they or he think fit to attend, after receiving not less than forty-eight hours' notice for that purpose.

Company
not to
disturb
pipes until
they have
laid down
others.

19. Provided always, that it shall not be lawful for the company to remove or displace any of the mains or pipes (other than private service pipes), syphons, plugs, or other works belonging to any such company or society, or to do anything to impede the passage of water or gas into or through such mains or pipes, until good and sufficient mains or pipes, syphons, plugs, and all other works necessary or proper for continuing the supply of water or gas as sufficiently as the same was supplied by the mains or pipes proposed to be removed or displaced, shall, at the expense of the company, have been first made and laid down in lieu thereof, and be ready for use, in a position as little varying from that of the pipes or mains proposed to be removed or displaced as may be consistent with the construction of the railway, and to the satisfaction of the surveyor or engineer of such water or gas company or society, or, in case of disagreement between such surveyor or engineer and the company, as a justice shall direct.

20. It shall not be lawful for the company to lay down any such pipes contrary to the regulations of any Act of Parliament relating to such water or gas company or society, or to cause any road to be lowered for the purposes of the railway, without leaving a covering of not less than eighteen inches from the surface of the road over such mains or pipes.

Sect. 20.
Pipes not to be laid contrary to any Act, and 18 inches surface road to be retained.

21. The company shall make good all damage done to the property of the water or gas company or society, by the disturbance thereof, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with the mains, pipes, or works of such water or gas company or society, or with the private service pipes of any person supplied by them with water.

Company to make good all damage.

22. If it shall be necessary to construct the railway or any of the works over any mains or pipes of any such water or gas company or society, the company shall, at their own expense, construct and maintain a good and sufficient culvert over such main or pipe, so as to leave the same accessible for the purpose of repair.

When railway crosses pipes, company to make a culvert.

23. If by any such operations as aforesaid the company shall interrupt the supply of any water or gas they shall forfeit twenty pounds for every day that such supply shall be so interrupted, and such penalty shall be appropriated to the benefit of the poor of the parish in which such obstruction shall occur, in such manner as the overseers of the poor of the parish shall direct.

Penalty for obstructing supply of gas or water.

24. If any person wilfully obstruct any person acting under the authority of the company in the lawful exercise of their power, in setting out the line of the railway, or pull up or remove any poles or stakes driven into the ground for the purpose of so setting out the line of the railway, or deface or destroy any marks made for the same purpose, he

Penalty for obstructing construction of railway.

Sect. 24. shall forfeit a sum not exceeding five pounds for every such offence.

* * * * *

Sections 25—28 deal with drainage of land in Ireland. Section 29 deals with manufactories in Ireland.

And with respect to the temporary occupation of lands near the railway during the construction thereof, be it enacted as follows :

This heading covers sections 30—44.

Company
may
occupy
temporarily
private
roads
within
five hundred
yards
of the
railway.

30. Subject to the provisions herein and in the special Act contained, it shall be lawful for the company, at any time before the expiration of the period by the special Act limited for the completion of the railway, to enter upon and use any existing private road, being a road gravelled or formed with stones or other hard materials, and not being an avenue or a planted or ornamental road, or an approach to any mansion house, within the prescribed limits, if any, or, if no limits be prescribed, not being more than five hundred yards distant from the centre of the railway as delineated on the plans ; but before the company shall enter upon or use any such existing road they shall give three weeks' notice of their intention to the owners and occupiers of such road, and of the lands over which the same shall pass, and shall in such notice state the time during which, and the purposes for which, they intend to occupy such road, and shall pay to the owners and occupiers of such road, and of the lands through which the same shall pass, such compensation for the use and occupation of such road, either in a gross sum of money or by half-yearly instalments, as shall be agreed upon between such owners and occupiers respectively and the company, or in case they differ about the compensation, the same shall be settled by two justices, in the same manner as any compensation not exceeding fifty pounds is directed to be settled by said Lands Clauses Consolidation Act.(a)

(a) See sections 22 and 24 of that Act, *ante*, pp. 55 and 59.

31. It shall be lawful for the owners and occupiers of any such road, and of the lands over which the same passes, within ten days after the service of the aforesaid notice, by notice in writing to the company to object to the company making use of such road, on the ground that other roads such as the company are hereinbefore authorised to use for the purposes aforesaid, or that some public road would be more fitting to be used for the same ; and upon the objection being so made such proceedings may be had as are hereinafter mentioned with respect to lands temporarily occupied by the company, in respect of which three weeks' notice is hereinafter required to be given,^(a) and in the same manner as if the provisions relative to such proceedings the word road or roads, or the words road and the lands over which the same passes, as the case may require, had been substituted in such provisions for the word lands.^(b)

Sect. 31.
Power to owners and occupiers of road and land to object that other roads should be taken.

(a) See sections 32 and 33.

(b) Sections 35—38.

32. Subject to the provisions herein and in the special Act contained, it shall be lawful for the company, at any time before the expiration of the period by the special Act limited for the completion of the railway, without making any previous payment, tender, or deposit, to enter upon any lands within the prescribed limits, or, if no limits be prescribed, not being more than two hundred yards distant from the centre of the railway as delineated on the plans, and not being a garden, orchard, or plantation attached or belonging to a house, nor a park, planted walk, avenue, or ground ornamentally planted, and not being nearer to the mansion house of the owner of any such lands than the prescribed distance, or if no distance be prescribed, then not nearer than five hundred yards therefrom, and to occupy the said lands so long as may be necessary for the construction or repair of that portion of the railway, or of the accommodation works connected therewith, hereinafter mentioned, and to

Power to take temporary possession of land without previous payment of price.

Sect. 32. use the same for any of the following purposes ; (that is to say,)

For the purpose of taking earth or soil by side cuttings therefrom ;

For the purpose of depositing spoil thereon ;

For the purpose of obtaining materials therefrom for the construction or repair of the railway or such accommodation works as aforesaid ; or

For the purpose of forming roads thereon to or from or by the side of the railway ;

And in exercise of the powers aforesaid it shall be lawful for the company to deposit and also to manufacture and work upon such lands materials of every kind used in constructing the railway, and also to dig and take from out of any such lands any clay, stone, gravel, sand, or other things that may be found therein useful or proper for constructing the railway or any such roads as aforesaid, and for the purposes aforesaid(a) to erect thereon workshops, sheds, and other buildings of a temporary nature : Provided always, that nothing in this Act contained shall exempt the company from an action for nuisance or other injury, if any done, in the exercise of the powers hereinbefore given, to the lands or habitations of any party other than the party whose lands shall be so taken or used for any of the purposes aforesaid : Provided also, that no stone or slate quarry, brick field, or other like place, which at the time of the passing of the special Act shall be commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same shall be taken or used by the company, either wholly or in part, for any of the purposes lastly hereinbefore mentioned.

“For the purpose of forming roads.”—This does not include a railroad and the company cannot take land for the purpose of connecting temporarily the main line of another railway with their own line for the purpose of bringing materials from such main line for the construction of their line. *Morris v. Tottenham and Forest Gate Railway Company* (1892), 2 Ch. 47. In the same case it was also decided that

the works for which land is taken must be necessary and not merely for saving expense to the company. Cf., section 16, note "All other acts necessary," *ante*, p. 320. Sect. 32.

(a) "For the purposes aforesaid."—These words refer to the purposes specifically mentioned in this section and no other. They do not refer to purposes previously mentioned in the Act, as, for example, in section 16. The temporary erection of a mortar mill could not, therefore, be justified under this section. *Fenwick v. East London Railway Company*, 20 Eq. 544, p. 547.

Lands cannot be taken compulsorily and permanently for the purpose only of excavating materials. *Eversfield v. Mid Sussex Railway Company*, 3 De G. & J. 286.

"An action of nuisance."—These words do not limit the remedy of a person injured merely to a common law action for damages, although at the time when the Act was passed an application for an injunction could not be combined with it. An application to restrain may, therefore, be made in the Chancery Division. *Fenwick v. East London Railway Company*, 20 Eq. 544, p. 549.

33. In case any such lands shall be required for spoil banks or for side cuttings, or for obtaining materials for the construction or repair of the railway, the company shall before entering thereon (except in the case of accident to the railway requiring immediate reparation) give three weeks' notice in writing to the owners and occupiers of such lands of their intention to enter upon the same for such purposes; and in case the said lands are required for any of the other purposes hereinbefore mentioned the company shall (except in the cases aforesaid) give ten days' like notice thereof, and the company shall in such notices respectively state the substance of the provisions hereinafter contained respecting the right of such owner or occupier to require the company to purchase any such lands, or to receive compensation for the temporary occupation thereof, as the case may be.

Company
to give
notice
previous
to such
temporary
possession.

The notice should state for which of the purposes mentioned in section 32 the land is wanted; a notice that it is wanted for these purposes or some one of them is not sufficient, as the landowner will be unable to object under section 35 that other lands will be more fitting for the required purpose. *Poynder v. Great Northern Railway Company*, 16 Sim. 3.

34. The said notice shall either be served personally on such owners and occupiers, or left at their last usual place of

Service of
notices on
owners

Sect. 34. and occupiers of lands. abode, if any such can, after diligent inquiry, be found, and in case any such owner shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Cf. section 19 of the Lands Clauses Act, 1845, and notes thereto, ante, p. 49.

Power to owner to object that other lands ought to be taken.

35. In any case in which a notice of three weeks is herebefore required to be given it shall be lawful for the owner or occupier of the lands therein referred to, within ten days after the service of such notice, by notice in writing to the company to object to the company making use of such lands, either on the ground that the lands proposed to be taken for the purposes aforesaid, or some part thereof, or of the materials contained therein, are essential to be retained by such owner, in order to the beneficial enjoyment of other neighbouring lands belonging to him, or on the ground that other lands lying contiguous or near to those proposed to be taken would be more fitting to be used for such purposes by the company ; and upon objection being so made such proceedings may be had as hereinafter mentioned.

Power to two justices to order that the lands and materials shall not be taken.

36. If the objection so made be on the ground that the lands proposed to be taken, or some part thereof, or of the materials contained therein, are essential to be retained by the owner in order to the beneficial enjoyment of other neighbouring lands belonging to him, it shall be lawful for any justice, on the application of such owner, to summon the company to appear before two justices(*a*) at a time and place to be named in the summons, such time not being later than the expiration of the said twenty-one days' notice ; and on the appearance of the company, or, in their absence, upon proof of due service of the summons, it shall be lawful for such justices to inquire into the truth of such ground of objection ; and if it appear to such justices that for some special reason, to be stated in the order after mentioned, the

lands so proposed to be taken, or any part thereof, or of the Sect. 36. materials contained therein, are essential to be retained by the owner of such lands in order to the beneficial enjoyment of other neighbouring lands belonging to him, and ought not therefore to be taken or used by the company, it shall be lawful for such justices, by writing under their hands, to order that the lands so proposed to be taken, or some part thereof, or of the materials contained therein, to be specified in such order, shall not be taken or used by the company, and after service of such order on the company it shall not be lawful for them to take or use, without the previous consent in writing of the owner thereof, any of the lands or materials which by such order they are ordered not to take or use.

(a) See definition and notes to section 3 of the Lands Clauses Act, 1845, *ante*, p. 6.

37. If the objection so made as aforesaid be on the ground that other lands lying contiguous to those proposed to be taken, and being sufficient in quantity, and such as the company are hereinbefore authorised to use for the purposes aforesaid, would be more fitting to be used by the company, and if in such case the company shall refuse to occupy such other lands in lieu of those mentioned in the notice, it shall be lawful for any justice, on the application of such owner or occupier, to summon the company and the owners and occupiers of such other lands to appear before two justices at a time and place to be named in such summons, such time not being more than fourteen days after such application nor less than seven days from the service of such summons; and on the appearance of the parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to determine summarily which of the said lands shall be used by the company for the purposes aforesaid, and to authorise the company to occupy and use the same accordingly.

Power to
justices to
order
other
lands to
be taken.

38. If in the case last mentioned it shall appear to such justices, upon the inquiry before them, that the lands of any

Power to
the jus-
tices to

Sect. 38. other party not summoned before them, being sufficient in quantity, and such as the company are hereinbefore authorised to take or use for the purposes aforesaid, would be more fitting to be used by the company than the lands of the person who shall have been so summoned as aforesaid, it shall be lawful for the said justices to adjourn such inquiry, and to summon such other person to appear before them at any time, not being more than fourteen days from such inquiry nor less than seven days from the service of such summons; and on the appearance of the parties, or, in the absence of any of them, on proof of due service of the summons, it shall be lawful for such justices to determine finally which lands shall be used for the purposes aforesaid, and to authorise the company to occupy and use the same accordingly.

The company to give sureties if required.

39. Before entering, under the provisions hereinbefore contained, upon any such lands as shall be required for spoil banks or for side cuttings, or for obtaining materials or forming roads as aforesaid, the company shall, if required by the owner or occupier thereof, seven days at least before the expiration of the notice to take such lands as hereinbefore mentioned, find two sufficient persons, to be approved of by a justice, in case the parties differ, who shall enter into a bond to such owner or occupier in a penalty of such amount as shall be approved of by such justice, in case the parties differ, conditioned for the payment of such compensation as may become payable in respect of the same in manner herein mentioned.

Cf. section 85 of the Lands Clauses Act and notes thereto, *ante*, p. 122.

Company to separate the lands before using them.

40. Before the company shall use any such lands for any of the purposes aforesaid they shall, if required so to do by the owner or occupier thereof, separate the same by a sufficient fence from the lands adjoining thereto, with such gates as may be required by the said owner or occupier for the convenient occupation of such lands, and shall also, to all

private roads used by them as aforesaid, put up fences and gates in like manner, in all cases where the same may be necessary to prevent the straying of cattle from or upon the lands traversed by such roads, and in case of any difference between the owners and occupiers of such roads and lands and the company as to the necessity for such fences and gates, such fences and gates as any two magistrates shall deem necessary for the purposes aforesaid, on application being made to them in like manner as hereinbefore is provided in respect to the use of such roads. Sect. 40.

Cf. section 68 of this Act, *infra*.

41. That if any land shall be taken or used by the company, under the provisions of this or the special Act, for the purpose of getting materials therefrom for the construction or repair of the railway or the accommodation works connected therewith, they shall work the same in such manner as the surveyor or agent of the owner of such land shall direct, or, in case of disagreement between such surveyor or agent and the company, in such manner as any justice shall direct, on the application of either party after notice of the hearing the application shall have been given to the other party. Lands taken for getting materials, &c., to be worked as the surveyor or owner may direct.

42. In all cases in which the company shall in exercise of the powers aforesaid enter upon any lands for the purpose of making spoil banks or side cuttings thereon, or for obtaining therefrom materials for the construction or repair of the railway, it shall be lawful for the owners or occupiers of such lands, or parties having such estates or interests therein as, under the provisions in the said Lands Clauses Consolidation Act mentioned, would enable them to sell or convey lands to the company, at any time during the possession of any such lands by the company, and before such owners or occupiers shall have accepted compensation from the company in respect of such temporary occupation, to serve a notice in writing on the company requiring them to purchase the said Owner of lands may compel company to purchase lands so temporarily occupied.

Sect. 42. lands, or the estates and interests therein capable of being sold and conveyed by them respectively; and in such notice such owners or occupiers shall set forth the particulars of such their estate or interest in such lands, and the amount of their claim in respect thereof; and the company shall thereupon be bound to purchase the said lands, or the estate and interest therein capable of being sold and conveyed by the parties serving such notice.

As to persons enabled to sell and convey, see section 7 of the Lands Clauses Act, 1845, *ante*, p. 19; and as to particulars of their estate or interest, see sections 18 and 21 and notes, *ante*, pp. 45, 51.

Where a company had excavated soil on the land of another, and some years after the claim in respect thereof was referred to arbitration, and the claim was stated in the submission to be "for lands taken and used and otherwise injured," and the arbitrators found the land had been taken and used, and awarded a sum as purchase money, which was paid to the landowner, it was held that the land had thereby become the property of the company. *In re Belfast Central Railway Company; Ex parte Macrory*, 19 W. R. 238.

Compensation to be made for temporary occupation.

43. In any of the cases aforesaid, where the company shall not be required to purchase such lands, and in all other cases where they shall take temporary possession of lands by virtue of the powers herein or in the special Act granted, it shall be incumbent on the company, within one month after their entry upon such lands, upon being required so to do, to pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of their so taking possession of his lands, and shall also from time to time during their occupation of the said lands pay half-yearly to such occupier or to the owner of the lands, as the case may require, a rent to be fixed by two justices in case the parties differ, and shall also, within six months after they shall have ceased to occupy the said lands, and not later than six months after the expiration of the time by the special Act limited for the completion of the railway, pay to such owner and occupier, or deposit in the bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss,

damage, or injury that may have been sustained by them by **Sect. 43.** reason of the exercise, as regards the said lands, of the powers herein or in the special Act granted, including the full value of all clay, stone, gravel, sand, and other things taken from such lands.

44. The amount and application of the purchase money and other compensation payable by the company in any of the cases aforesaid shall be determined in the manner provided by the said Lands Clauses Consolidation Act for determining the amount and application of the compensation to be paid for lands taken under the provisions thereof. Compensation to be ascertained under the Lands Clauses Act.

See Lands Clauses Act, 1845, s. 21 and notes, *ante*, p. 52; and as to application, sections 69—80, *ante*, p. 143 *et seq.*

45. And be it enacted, that it shall be lawful for the company, in addition to the lands authorised to be compulsorily taken by them under the powers of this or the special Act, to contract with any party willing to sell the same for the purchase of any land adjoining or near to the railway, not exceeding in the whole the prescribed number of acres for extraordinary purposes; (that is to say,) Land to be taken for additional stations, &c.

For the purpose of making and providing additional stations, yards, wharfs, and places for the accommodation of passengers, and for receiving, depositing, and loading or unloading goods or cattle to be conveyed upon the railway, and for the erection of weighing machines, toll houses, offices, warehouses, and other buildings and conveniences :

For the purpose of making convenient roads or ways to the railway, or any other purpose which may be requisite or convenient for the formation or use of the railway.

In purchasing lands for additional purposes a railway company are not bound to choose a site which may be more convenient to other persons, and the fact that a yard for cattle traffic is established on such land and causes annoyance to the occupiers of adjoining houses, will not entitle such occupiers to an injunction to restrain the company from

Sect. 45. carrying on their cattle traffic on that land. *London, Brighton and South Coast Railway Company v. Truman*, 11 A. C. 45; cf. *Foster v. London, Chatham and Dover Railway Company*, 64 L. J. Q. B. 65.

Where land was conveyed to a railway company for the construction of a station house and other works and conveniences necessary and convenient for passenger and goods traffic, with a covenant to re-convey at the end of five years, any part not so used, it was held that a part used by the stationmaster as garden ground, and a part used by the porters, and a small part used by a coal dealer to store coal brought by the railway, were parts used for works, and that they were being used as provided, and that the company were not bound to re-convey. *Harris v. London and South Western Railway Company*, 60 L. T. (N.S.) 392.

And with respect to the crossing of roads or other interference therewith, be it enacted as follows:

Under this heading are sections 46—67.

Crossing
of roads.

46. If the line of the railway cross any turnpike road or public highway, then (except where otherwise provided by the special Act) either such road shall be carried over the railway, or the railway shall be carried over such road by means of a bridge, of the height and width and with the ascent or descent by this or the special Act in that behalf provided; and such bridge, with the immediate approaches, and all other necessary works connected therewith, shall be executed and at all times thereafter maintained at the expense of the company: Provided always, that, with the consent of two or more justices in petty sessions, as after mentioned, it shall be lawful for the company to carry the railway across any highway, other than a public carriage road, on the level.

“If the Railway Cross.”—The company have power to deviate the road when it is necessary for the construction of the line. See section 16 and notes thereto, *ante*, p. 319.

“Except where otherwise provided.”—A provision in a special Act, authorising a company to take a road over a railway on the level, will not prevent them taking the railway under the road and raising the road for that purpose, and if a person suffer by reason of the road being raised, his remedy is for compensation for his premises being injuriously affected, and not for an injunction to restrain the company from making their railway in this way. *Warden of Dover v. London, Chatham and Dover Railway Company*, 1 D. F. & G. 559.

“Either such road shall be carried.”—The company have an option as to how the line will cross the road, and if a *mandamus* order them

to carry the road over the railway by means of a bridge it will be invalid unless it appears upon the face of the record that the company has rendered it impossible to carry the railway over the road. *Reg. v. South Eastern Railway Company*, 4 H. L. 471. Sect. 46.

"Maintained at the expense of the company."—When a railway company carries a road over the railway by a bridge it is bound to keep both bridge and road and all the approaches thereto in repair, including not only the structure of the bridge and the approaches, but the metalling of the road on both. *North Staffordshire Railway Company v. Dale*, 8 E. & B. 836; *Trustees of Newcastle Roads v. North Staffordshire Railway Company*, 5 H. & N. 160. These cases were followed and approved by the House of Lords in *Lancashire and Yorkshire Railway Company v. Bury*, 14 A. C. 417. Where the railway is taken over the road and the road lowered for the purpose, it has been held that the company is not bound to keep the slope of the road in repair, as the road in such a case is not one of the approaches to the bridge. *London and North Western Railway Company v. Skerton*, 5 B. & S. 559, following with some doubt two Irish cases, *Waterford and Limerick Railway Company v. Kearney*, 12 Ir. C. L. 224; *Fosberry v. Waterford and Limerick Railway Company*, 13 Ir. C. L. 494; and see per Lord HERSCHELL in *Lancashire and Yorkshire Railway Company v. Bury*, 14 A. C. 417, p. 421. In a Scotch case it was decided that a railway company was not bound to keep in repair substituted roads. *Magistrates of Perth v. Earl of Kinnoull*, 10 Sc. Sess. Ca. (1872) 874.

"Consent of two or more justices."—For the procedure as to obtaining this consent, see *infra*, sections 59 and 60. As to "two justices," see note to section 3 of the Lands Clauses Act, 1845, *ante*, p. 9.

47. If the railway cross any turnpike road or public carriage road on a level, the company shall erect and at all times maintain good and sufficient gates across such road, on each side of the railway where the same shall communicate therewith, and shall employ proper persons to open and shut such gates; and such gates shall be kept constantly closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross such railway; and such gates shall be of such dimensions and so constructed as when closed to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway; and the person intrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts, or carriages shall have passed through the same, under a penalty of forty shillings for every default therein: Provided always,

Provision
in cases
where
roads are
crossed on
a level.

Sect. 47. that it shall be lawful for the Board of Trade, in any case in which they are satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the railway, to order that such gates shall be kept so closed, instead of across the road, and in such case such gates shall be kept constantly closed across the railway, except when engines or carriages passing along the railway shall have occasion to cross such road, in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

By the Railways Clauses Act, 1863 (26 & 27 Vict. c. 92), s. 7, the Board of Trade has power to require that a bridge may be made to take the place of a level crossing at any time if it appears to them necessary for the public safety; but the Board of Trade cannot enforce this by *mandamus* against a company which has exhausted its powers of raising money and has leased its line in perpetuity to another company. *Re the Bristol and North Somerset Railway Company*, 3 Q. B. D. 10.

As to
crossing
of turn-
pike roads
adjoining
stations.

48. Where the railway crosses any turnpike road on a level adjoining to a station, all trains on the railway shall be made to slacken their speed before arriving at such turnpike road, and shall not cross the same at any greater rate of speed than four miles an hour; and the company shall be subject to all such rules and regulations with regard to such crossings as may from time to time be made by the Board of Trade.

Construc-
tion of
bridges
over roads.

49. Every bridge to be erected for the purpose of carrying the railway over any road shall (except where otherwise provided by the special Act) be built in conformity with the following regulations; (that is to say,)

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty-five feet if the arch be over a turnpike road, and of twenty-five feet if over a public carriage road, and of twelve feet if over a private road:

The clear height of the arch from the surface of the road **Sect. 49.** shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road, and fifteen feet for a space of ten feet if over a public carriage road; and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet:

The clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private carriage road:

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a turnpike road, one foot in twenty feet if over a public carriage road, and one foot in sixteen feet if over a private carriage road not being a tramroad or railroad, or if the same be a tramroad or railroad the descent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special Act.

Where a company contracted with a landowner to make a suitable bridge over a street as then planned or intended, and the plan showed that the street was intended to be 42 feet wide, it was held that the company could not make a bridge of 25 feet under this section, but must make a bridge with an arch of 42 feet. If a company desires to take the benefit of this section in such a contract, it should be referred to in the contract. *Clarke v. Manchester, Sheffield, and Lincolnshire Railway Company*, 1 J. & H. 631.

If the company, in order to make the bridge of the height required by this section, lowers the road, so that it is liable to be flooded, an injunction will be granted to restrain it in a suit at the instance of the Attorney-General. *Attorney-General v. Furness Railway Company*, 47 L. J. Ch. 776.

50. Every bridge erected for carrying any road over the railway shall (except as otherwise provided by the special Act) be built in conformity with the following regulations; Construction of bridges over railway. (that is to say,)

There shall be a good and sufficient fence on each side of the bridge of not less height than four feet, and on each

Sect. 50.

side of the immediate approaches of such bridge of not less than three feet :

The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a turnpike road, and twenty-five feet if a public carriage road, and twelve feet if a private road :

The ascent shall not be more than one foot in thirty feet if the road be a turnpike road, one foot in twenty feet if a public carriage road, and one foot in sixteen feet if a private carriage road, not being a tramroad or railroad, or if the same be a tramroad or railroad the ascent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special Act.

The width of the bridges need not exceed the width of the road in certain cases.

51. Provided always, that in all cases where the average available width for the passage of carriages of any existing roads within fifty yards of the points of crossing the same is less than the width hereinbefore prescribed for bridges over or under the railway, the width of such bridges need not be greater than such average available width of such roads, but so nevertheless that such bridges be not of less width in the case of a turnpike road or public carriage road than twenty feet : Provided also, that if any time after the construction of the railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the company shall be bound, at their own expense, to increase the width of the said bridge to such extent as they may be required by the trustees or surveyors of such road, not exceeding the width of such road as so widened, or the maximum width herein or in the special Act prescribed for a bridge in the like case over or under the railway.

Where a bridge was made so that the average available breadth for carriages was unaltered, but the piers projected upon and narrowed the footpaths by the side of the road, it was held that the section had been complied with, as the footpaths could not be taken as part of the turnpike road over which the arch was to be thrown. *Reg. v. Rigby*, 19 L. J. Q. B. 153.

52. Provided also, that if the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same, or the inclination of such portion of any road as may require to be altered, or for which another road shall be substituted, shall be steeper than the inclination hereinbefore required to be preserved by the company, then the company may carry any such road over or under the railway, or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed, or of the road so requiring to be altered, or for which another road shall be substituted.

Sect. 52.
Existing
inclina-
tions of
roads
crossed or
diverted
need not
be im-
proved.

53. If, in the exercise of the powers by this or the special Act granted, it be found necessary to cross, cut through, raise, sink, or use any part of any road, whether carriage road, horse road, tramroad, or railway, either public or private, so as to render it impassable for or dangerous or extraordinarily inconvenient to passengers or carriages, or to the persons entitled to the use thereof, the company shall, before the commencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with, and shall at their own expense maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with, or as nearly so as may be.

Before
roads in-
terfered
with
others to
be sub-
stituted.

"Dangerous or extraordinarily inconvenient."—Where a railway company while constructing a railway laid down rails along a portion of the highway and ran locomotives and trucks along it, this temporary line proceeding for some distance along one side of the road and leaving the other side for passengers and vehicles, and no fence separating the line from the remainder of the highway, it was held that, although the evidence did not show that the public had been inconvenienced yet that the road had been rendered "dangerous and extraordinarily inconvenient" and a perpetual injunction was granted restraining the company from using the highway until it had made a substituted road. *Attorney-General v. Widnes Railway Company*, 22 W. R. 607.

"Cause a sufficient road to be made."—This section has been held to apply to a permanent diversion as well as to a temporary one, and where the new permanent road made in substitution for the old one was dangerous the Court ordered an injunction to restrain the company using the old road, but gave the company time to make such alterations on the new road as to render it safe. *Attorney-General v. Barry Dock and Railway Company*, 35 Ch. D. 573.

Sect. 53. Where the special Act authorised a railway company to take part of a tram line for the purpose of making their railway by changing the tram line into a railway, the Court held that this section did not apply, and that they were not bound to make a substituted tram road. *Tanner v. South Wales Railway Company*, 5 E. & B. 618.

If there is an existing road alleged to be as convenient as any substituted road, the company will not be relieved from making a substituted road, and if an injunction issues to restrain the company obstructing the road until a substituted road be made, the making of a level crossing over the original road will constitute a breach of the injunction. *Attorney-General v. Great Northern Railway Company*, 4 De G. & Sm. 75.

The substituted road must be as convenient as possible for everybody, and if a company has power to stop up and divert a public road so as to cut off all access to and from property previously bounded by the public road, the owner of the property is entitled to a substituted road although the company may have made a substituted road convenient to the general public. *Hay v. City of Glasgow Union Railway Company*, 1 Sc. Sess. (1874), 4th ser., p. 1191.

A railway company cannot obstruct a private way without compensation, and an Act which enables a company without compensation to extinguish certain footways without compensation will be construed to apply to public ones only. *Wills v. London, Tilbury, and Southend Railway Company*, 5 Ch. D. 126. If a company wrongfully obstructs a private branch railway an action will lie for any special damage caused to the owner as well as for penalties under section 54 if the company interferes with it without substituting another; but if an owner contract with a tenant to connect the branch line with the main line if the company fails or refuses to do so, and the company does fail and the tenant recovers in an action damages under the agreement, the landowner cannot recover these against the company as they are damages due to breach of his agreement and not the natural result of the company's neglect. *Caledonian Railway Company v. Colt*, 3 Macq. 833.

Enforcing the Section.—If the injury affects the public the section may be enforced by an application for an injunction at the suit of the Attorney-General (see cases, *supra*), or by indictment. *Reg. v. Great North of England Railway Company*, 9 Q. B. 315; and cf. *Reg. v. Birmingham and Gloucester Railway Company*, 3 Q. B. 223. A statutory duty may also be enforced by *mandamus*. See *Reg. v. Brighton and Gloucester Railway Company*, 2 Q. B. 47; *Re Bristol and Somerset Railway Company*, 3 Q. B. D. 10. It is not a sufficient return to a *mandamus* to state that the company cannot comply without purchasing more land, and that the powers of compulsory purchase have expired. *Reg. v. Birmingham and Gloucester Railway Company*, 2 Q. B. 47.

As to recovering penalties from the company, see section 54; and as to the right of action by a private individual, see section 55.

Penalty
for not
substitut-
ing a
road.

54. If the company do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid, they shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted; and

such penalty shall be paid to the trustees, commissioners, Sect. 54.
surveyor, or other person having the management of such
road, if a public road, and shall be applied for the purposes
thereof, or in case of a private road the same shall be paid
to the owner thereof, and every such penalty shall be recover-
able with costs by action in any of the superior courts.

The "owner" of a private road for the purposes of this section is
the person for the time being in possession ; a lessee would, therefore,
be the person entitled to the penalty and not the reversioner. *Mann v.*
Great Southern and Western Railway Company, 9 Ir. C. L. R. 105. The
case of *Collinson v. Newcastle and Darlington Railway Company*, 1
Car. & K. 546, a decision to the contrary, is said to have been reversed
on motion for a new trial ; see Walford on " Railways."

55. If any party entitled to a right of way over any road so interfered with by the company shall suffer any special damage by reason that the company shall fail to cause another sufficient road to be made before they interfere with the existing road, it shall be lawful for such party to recover the amount of such special damage from the company, with costs, by action on the case in any of the superior courts, and that whether any party shall have sued for such penalty as aforesaid or not, and without prejudice to the right of any party to sue for the same.

Party suffering damage from interruption of road to recover in an action on the case.

It has been held that the effect of this and the two preceding sections is to take away the right of action at common law for interference with a private road except in the case here provided, namely, where special damage has been committed. *Watkins v. Great Northern Railway Company*, 16 Q. B. 961. In such a case the party entitled to a right of way would have a remedy by compensation. S. C., and see notes to section 68 of the Lands Clauses Act, 1845, *ante*, p. 138, and for temporary occupation, see section 30 of this Act, *ante*, p. 236.

If special damage has been suffered this section would, apparently, not prevent the owner also obtaining an injunction if the act of the company is wrongful, or if they have wrongfully neglected to substitute another road. Cf. *Fenwick v. East London Railway Company*, 20 Eq. 544, p. 549, and see the Scotch case, *Hay v. City of Glasgow Union Railway Company*, 1 Rettie (1874) 1191.

56. If the road so interfered with can be restored compatibly with the formation and use of the railway, the same shall be restored to as good a condition as the same was in at

Period for restoration of roads interfered with.

Sect. 56. the time when the same was first interfered with by the company, or as near thereto as may be ; and if such road cannot be restored compatibly with the formation and use of the railway, the company shall cause the new or substituted road, or some other sufficient substituted road, to be put into a permanently substantial condition, equally convenient as the former road, or as near thereto as circumstances will allow ; and the former road shall be restored, or the substituted road put into such condition as aforesaid, as the case may be, within the following periods after the first operation on the former road shall have been commenced, unless the trustees or parties having the management of the road to be restored by writing under their hands consent to an extension of the period, and in such case within such extended period ; (that is to say,) if the road be a turnpike road, within six months, and if the road be not a turnpike road, within twelve months.

Under the corresponding section in the Railway Clauses Consolidation (Scotland) Act, it has been held that where it would have been necessary to alter considerably the levels of the road, that such road was not a road that could be restored compatibly with the formation and use of the railway, and that the railway company was entitled to make a substituted road. *Christie v. Caledonian Railway Company*, 10 Sess. Cas. (Sc. 1847) 312.

In that case an opinion was expressed that a proprietor through whose land a public road passes, and who is interested in the use of it, had a title to object to the railway company's power to divert it, although the road trustees, who were proprietors of the road, did not object, but he cannot object on the ground that his land will be taken to make the new road.

Penalty
for failing
to restore
road.

57. If any such road be not so restored, or the substituted road so completed as aforesaid, within the periods herein or in the special Act fixed for that purpose, the company shall forfeit to the trustees, commissioners, surveyor, or other person having the management of the road interfered with by the company, if a public road, or if a private road to the owner thereof, five pounds for every day after the expiration of such periods respectively during which such road shall not be so restored or the substituted road completed ; and it shall be lawful for the justices by

whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred. Sect. 57.

A person who had dedicated a road to the public, but had not fulfilled the conditions which made it repairable by the parish, was held not to be a person having the management of such road under this section, and that he could not recover penalties under it against a railway company who had made a cut across it and rendered it impassable, and had not in due time restored it, as such a dedicator was not bound to repair it. *Reg. v. Wilson*, 18 Q. B. 348.

58. If in the course of making the railway the company shall use or interfere with any road they shall from time to time make good all damage done by them to such road ; and if any question shall arise as to the damage done to any such road by the company, or as to the repair thereof by them, such question shall be referred to the determination of two justices ; and such justices may direct such repairs to be made in the state of such road, in respect of the damage done by the company, and within such period as they think reasonable, and may impose on the company, for not carrying into effect such repairs, any penalty not exceeding five pounds per day as to such justices shall seem just ; and such penalty shall be paid to the surveyor or other person having the management of the road interfered with by the company, if a public road, and be applied for the purposes of such road, or if a private road the same shall be paid to the owner thereof : Provided always, that in determining any such question with regard to a turnpike road the said justices shall have regard to and shall make full allowance for any tolls that may have been paid by the company on such road in the course of the using thereof. Company
to repair
roads used
by them.

The word "use" in this section is to be taken in its ordinary sense meaning, "travel upon," and a company is liable to make good the damage done to a road by carting stone, bricks, timber, and other materials, and whether such carting is done by contractors, sub-contractors or other persons employed by the company. *West Riding and Grimsby Railway Company v. Wakefield Local Board*, 33 L. J. M. C. 174. The order by the justices should say what length of road has been injured, and should direct that portion to be repaired. The conviction, if the order is disobeyed, should refer to the order. *London and North Western Railway Company v. Wetherall*, 20 L. J. Q. B. 337.

Sect. 59.

Proceed-
ings on
applica-
tion to
justices to
consent to
level cross-
ings of
bridleways
and foot-
ways.

59. When the company shall intend to apply for the consent of two justices, as hereinbefore provided, (a) so as to authorise them to carry the railway across any highway other than a public carriage road on the level, they shall, fourteen days at least previous to the holding of the petty sessions at which such application is intended to be made, cause notice of such intended application to be given in some newspaper circulating in the county, and also to be affixed upon the door of the parish church of the parish in which such crossing is intended to be made, or if there be no such church some other place to which notices are usually affixed; and if it appear to any two or more justices acting for the district in which such highway at the proposed crossing thereof is situate, and assembled in petty sessions, after such notice as aforesaid, that the railway can, consistently with a due regard to the public safety and convenience, be carried across such highway on the level, it shall be lawful for such justices to consent that the same may be so carried accordingly.

(a) Section 46.

Appeal
against the
determina-
tion of the
justices.

60. If either party shall feel aggrieved by the determination of such justices upon any such application as aforesaid, it shall be lawful for such party, in like manner and subject to the like conditions as are hereinafter provided in the case of appeals in respect of penalties and forfeitures, to appeal to the quarter sessions of the county or place in which the cause of appeal shall have arisen; and it shall be lawful for the justices in such quarter sessions, upon the hearing of such appeal, either to confirm or quash the determination, or to make such other order in regard to the method of carrying the railway across such highway as aforesaid, as to them shall seem fit, and to make such order concerning the costs both of the original application and of the appeal as to them shall seem reasonable.

See section 157, and the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43).

61. If the railway shall cross any highway other than a public carriageway on the level, the company shall at their own expense make and at all times maintain convenient ascents and descents, and other convenient approaches, with handrails or other fences, and shall, if such highway be a bridleway, erect and at all times maintain good and sufficient gates, and if the same shall be a footway, good and sufficient gates or stiles, on each side of the railway where the highway shall communicate therewith.

Sect. 61.

Company to make sufficient approaches and fences to bridleways and footways crossing on the level.

62. If, where the railway shall cross any highway on the level, the company fail to make convenient ascents and descents or other convenient approaches, and such handrails, fence, gates, and stiles as they are hereinbefore required to make, it shall be lawful for two justices, on the application of the surveyor of roads, or of any two householders within the parish or district where such crossing shall be situate, after not less than ten days' notice to the company, to order the company to make such ascent and descent or other approach, or such handrails, fences, gates, or stiles as aforesaid, within a period to be limited for that purpose by such justices; and if the company fail to comply with such order they shall forfeit five pounds for every day that they fail so to do; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied, in such manner and by such person as they think fit, in executing the work in respect whereof such penalty was incurred.

Justices to have power to order approaches and fences to be made to highways crossing on the level.

This section does not empower justices to order the erection of handrails and fences at a level crossing on a road which is a carriage road and general highway. The only provision in the Act requiring the company to erect such rails and fences is that contained in section 61, which is confined to highways other than public carriageways. *Reg. v. Schofield*, 69 L. T. 313.

63. If the commissioners or trustees of any turnpike road, or the surveyor of any highway, apprehend danger to the passengers on such road in consequence of horses being frightened by the sight of the engines or carriages travelling

Screen for roads to be made, if required by the Board of Trade.

Sect. 63. upon the railway, it shall be lawful for such commissioners, or trustees, or surveyor, after giving fourteen days' notice to the company, to apply to the Board of Trade with respect thereto; and if it shall appear to the said board that such danger might be obviated or lessened by the construction of any works in the nature of a screen near to or adjoining the side of such road, it shall be lawful for them, if they shall think fit, to certify the works necessary or proper to be executed by the company for the purpose of obviating or lessening such danger, and by such certificate to require the company to execute such works within a certain time after the service of such certificate, to be appointed by the said board.

Penalty
for failing
to con-
struct.

64. Where by any such certificate as aforesaid the company shall have been required to execute any such work in the nature of a screen, they shall execute and complete the same within the period appointed for that purpose in such certificate; and if they fail so to do they shall forfeit to the said commissioners, or trustees, or surveyor, five pounds for every day during which such works shall remain uncompleted beyond the period so appointed for their completion; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

Justices
to have
power to
order
repair of
bridges,
&c.

65. Where, under the provisions of this or the special Act, or any Act incorporated therewith, the company are required to maintain or keep in repair any bridge, fence, approach, gate or other work executed by them, it shall be lawful for two justices, on the application of the surveyor of roads or of any two householders of the parish or district where such work may be situate, complaining that any such work is out of repair, after not less than ten days' notice to the company, to order the company to put such work into complete repair within a period to be limited for that purpose by such justices; and if the company fail to comply with

such order they shall forfeit five pounds for every day that they fail so to do ; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied, in such manner and by such persons as they think fit, in putting such work into repair. Sect. 65.

Where an Act incorporated this Act, except as expressly varied, and provision was made that trustees under the Turnpike Acts should require the company to repair the roads, this section was thereby excluded ; but on the expiration of these Acts, under which the trustees acted, the provisions of the general Act were held to revive. *London, Chatham, and Dover Railway Company v. Board of Works for Wandsworth*, L. R. 8 C. P. 185.

A special Act, which incorporated so much of this Act as relates "to the mode of crossing roads and construction of bridges" was held to incorporate this section, and section 145 which provides the mode of enforcing the penalty. *Bristol and Exeter Railway Company v. Tucker*, 13 C. B. (N.S.) 207.

66. [*And whereas the expense might frequently be avoided, and public convenience promoted, by a reference to the Board of Trade upon the construction of public works of an engineering nature connected with the railway, where a strict compliance with the provisions of this or the special Act might be impossible, or attended with inconvenience to the company, and without adequate advantage to the public : Be it enacted, that*](a) in case any difference in regard to the construction, alteration, or restoration of any road or bridge, or other public work of an engineering nature required by the provisions of this or the special Act, shall arise between the company and any trustees, commissioners, surveyors, or other persons having the control of or being authorised by law to enforce the construction of such road, bridge, or work, it shall be lawful for either party, after giving fourteen days' notice in writing of their intention so to do to the other party, to apply to the Board of Trade to decide upon the proper manner of constructing, altering, or restoring such road, bridge, or other work ; and it shall be lawful for the Board of Trade, if they shall think fit, to decide the same accordingly, and to authorise, by certificate in writing, any arrangement or mode of construction in regard to any such road, bridge, or other

Board of Trade empowered to modify the construction of certain roads, bridges, &c., where a strict compliance with the Act is impossible or inconvenient.

Sect. 66. work which shall appear to them either to be in substantial compliance with the provisions of this and the special Act, or to be calculated to afford equal or greater accommodation to the public using such road, bridge, or other work ; and after any such certificate shall have been given by the Board of Trade, the road, bridge, or other work therein mentioned shall be constructed by the company in conformity with the terms of such certificate, and being so constructed shall be deemed to be constructed in conformity with the provisions of this and the special Act : Provided always that no such certificate shall be granted by the Board of Trade unless they shall be satisfied that existing private rights or interests will not be injuriously affected thereby.

(a) The recital has been repealed by the Statute Law Revision Act, 1891.

Authenti-
cation of
certificates
of the
Board of
Trade,
service of
notices,
&c.

67. And be it enacted, that all regulations, certificates, notices, and other documents in writing purporting to be made or issued by or by the authority of the Board of Trade, and signed by some officer appointed for that purpose by the Board of Trade, shall for the purposes of this and the special Act, and any Act incorporated therewith, be deemed to have been so made and issued, and that without proof of the authority of the person signing the same, or of the signature thereto, which matters shall be presumed until the contrary be proved ; and service of any such document, by leaving the same at one of the principal offices of the railway company, or by sending the same by post addressed to the secretary at such office, shall be deemed good service upon the company ; and all notices and other documents required by this or the special Act to be given to or laid before the Board of Trade shall be delivered at, or sent by post addressed to, the office of the Board of Trade in *London*.

And with respect to works for the accommodation of lands adjoining the railway, be it enacted as follows :

This heading covers sections 68—75.

68. The Company shall make and at all times thereafter Sect. 68. maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway ; (that is to say,)

Such and so many convenient gates, bridges, arches, cul- ^{Gates, bridges, &c. :}verts and passages over, under, or by the sides of or leading to or from the railway as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made ; and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed, or during the formation thereof :

Also sufficient posts, rails, hedges, ditches, mounds or other ^{Fences :}fences for separating the land taken for the use of the railway from the adjoining lands not taken, and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout, by reason of the railway, together with all necessary gates made to open towards such adjoining lands, and not towards the railway, and all necessary stiles ; and such posts, rails, and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and the said other works as soon as conveniently may be :

Also all necessary arches, tunnels, culverts, drains, or other ^{Drains :}passages, either over or under or by the sides of the railway, of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be ; and such works shall be made from time to time as the railway works proceed :

Also proper watering places for cattle where by reason of ^{Watering places.}the railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to

Sect. 68.

their former watering places ; and such watering places shall be so made as to be at all times as sufficiently supplied with water as theretofore, and as if the railway had not been made, or as nearly so as may be ; and the company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering places :

Provided always, that the company shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the railway, nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

“**Shall make . . . the following works.**”—The powers of the company to take lands compulsorily extend to taking lands for these works as well as for the actual construction of the railway, provided the company has been authorised to take the lands if required. See note to section 16, *supra*, p. 318, and cases there cited ; and see also section 18 of the Lands Clauses Act, 1845, note, “Land authorised to be taken,” *ante*, p. 38.

This section has reference to what takes place upon the surface of the land and not below the surface, as in the case of mines, and a company would not be required to make accommodation works for mine owners. *Reg. v. Fisher*, 13 C. B. (n.s.) 191. The question whether works made by a company are accommodation works so as to entitle an adjoining owner to have them maintained is one to be determined at the time of the construction of the works, and the owner should at that time elect as to the step he will take for obtaining redress under the statute. S. C. pp. 199, 200.

Where the compensation for the severance of land is being ascertained by arbitrators or jury, they will be entitled and ought to take into account the fact that accommodation works may be ordered ; but that is only in regard to the present and not the prospective use of the land. See Lands Clauses Act, 1845, s. 63, *ante*, p. 118 ; *Reg. v. Brown*, L. R. 2 Q. B. 630.

Where a railway company provided a level crossing to join the severed portions of an owner's land, and the owner afterwards granted the land on one side to one person, and later the land on the other side to another person, and the former released to the company his right to use the crossing, and the company on their own land erected fences which obstructed the crossing, it was held that they were entitled so to do as the owner who had not released his right had no land to which he was entitled to have communication, and an injunction was granted to restrain him from injuring the fences, but without prejudice to any right he might acquire if he became possessed of any part of the severed land. *Midland Railway Company v. Gribble* (1895), 2 Ch. 129.

“Passages.”—Where under a special Act a company was required to **Sect. 68.** make such communications as would be necessary for the convenient use of certain pasture land, and the land was afterwards turned into building land, the owners of houses built on the land were held entitled to use the level crossings made when the land was pasture land. *United Land Company v. Great Eastern Railway Company*, 10 Ch. 586; cf. *Finch v. Great Western Railway Company*, 5 Ex. D. 254.

The word “necessary” here applies only to making good interruptions. If they can be made good in more than one way, the company, acting under the advice of their engineer, may choose which way the works are to be done, provided each way be convenient. If they are not convenient, the landlord can apply to the magistrates under section 69. The company has, therefore, power to take lands compulsorily for making good an interruption in a convenient way, and the landowner whose land is taken cannot object that it might be done in another way. *Wilkinson v. Hull and Barnsley Railway and Dock Company*, 20 Ch. D. 323; *Dowling v. Pontypool, &c., Railway Company*, 18 Eq. 714.

“Fences.”—The Railway Regulation Act, 1842 (5 & 6 Vict. c. 55), s. 10, enacts as follows:—

“All railway companies shall be under the same liability of obligation to erect and to maintain and repair good and sufficient fences throughout the whole of their respective lines, as they would have been if every part of such fences had been originally ordered to be made under an order of justices by virtue of the provisions to that effect in the Acts of Parliament relating to such railways respectively.”

This section has not been repealed, and is printed in the revised statutes, although JERVIS, C.J., in *Manchester, Sheffield, and Lincolnshire Railway Company v. Wallis*, 23 L. J. C. P. 85, p. 89, expressed an opinion that it was repealed and consolidated in the Railways Clauses Act, 1845, ss. 68 and 69. As to when an Act is impliedly repealed, see *Wyatt v. Gens* (1893), 2 Q. B. 225; *Summers v. Holborn Board of Works* (1895), 1 Q. B. 612; *City and South London Railway Company v. London County Council* (1891), 2 Q. B. 513.

The obligation to make and maintain fences applies only as against the cattle of the owners and occupiers of adjoining lands and their licensees, and does not apply to sheep trespassing or cattle straying on the highway. The liability is the same as that at common law of an owner who is bound to make and maintain a fence by prescription. *Ricketts v. East and West India Docks and Birmingham Railway Company*, 21 L. J. C. P. 201; *Manchester, Sheffield, and Lincolnshire Railway Company v. Wallis*, 23 L. J. C. P. 85; *Dawson v. Midland Railway Company*, L. R. 8 Ex. 9.

A highway is adjoining land within this section, but the section applies only in the case of animals driven along it, and not to those straying on it. *Midland Railway Company v. Daykin*, 17 C. B. 126; *Manchester, Sheffield, and Lincolnshire Railway Company v. Wallis*, 23 L. J. C. P. 85.

Sufficiency of fence.—“Cattle” in this section includes “pigs,” and the fence must be sufficient to prevent pigs getting on the line. *Child v. Hearn*, L. R. 9 Ex. 176. It must also be sufficient to prevent horses and other cattle putting their heads through and doing damage. *Wiseman v. Booker*, 3 C. P. D. 184. If sheep escape through a hole in a hedge, which is the fence provided, the company will be liable. *Bessant*

Sect. 68. *v. Great Western Railway Company* 8 C. B. (n.s.) 368. And a railway company have been held liable where a bull jumped over an iron fence six feet high. S. C. p. 372. The fact that a spring catch on a gate is out of order is evidence of negligence on the part of the company in not maintaining a sufficient fence and gate, although there may be other fastenings to the gate. *Brooks v. London and North Western Railway Company*, 33 W. R. 167.

Drains.—A company under this section is not bound to make and maintain drains to carry away water so as to prevent it percolating into mines below the railway. *Reg. v. Fisher*, 3 B. & S. 191. The remedy in such a case is not by proceeding under section 69, but by action. S. C. and *Bagnall v. London and North Western Railway Company*, 7 H. & N. 423.

Proviso.—The fact that the landowner may receive compensation instead of requiring accommodation works to be done will not exonerate the railway company from making and maintaining accommodation works for a tenant who may be in occupation at the time the railway is made. *Corry v. Great Western Railway Company*, 7 Q. B. D. 322.

As to the effect of receiving compensation so as to disentitle him from crossing the line until the accommodation works are made, see section 74, *post*.

Where a railway company by contract agreed to make certain accommodation works, and to render certain personal service as part of the compensation, for land taken; but after the railway had been closed for some years the undertaking was sold to another company, subject to the contracts and liabilities of the old company, the Court granted specific performance of the contracts to make the accommodation works, and to do the service against the purchasing company. *Fortescue v. Lostwithiel and Fowey Railway Company* [1894], 3 Ch. 621, following *Earl of Jersey v. Great Western Railway Company*, *ib.*, note, p. 625. For form of order against a railway company to observe contracts, see S. C. and *Greene v. West Cheshire Railway Company*, 13 Eq. 44.

Differences as to accommodation works to be settled by justices.

69. If any difference arise respecting the kind or number of any such accommodation works, or the dimensions or sufficiency thereof, or respecting the maintaining thereof, the same shall be determined by two justices; and such justices shall also appoint the time within which such work shall be commenced and executed by the company.

The justices have power to determine what works are sufficient on account of the interruption to the use of the land, that is to the present and not to the prospective use of it; the use at the time of the interruption. Thus, if it is agricultural land, they could not take into account that it might soon be used for building purposes. *Reg. v. Brown*, L. R. 2 Q. B. 630; and see *Reg. v. Fisher*, 13 C. B. (n.s.) 191. Their jurisdiction is, however, limited only to deciding the kind, number, and sufficiency. They have no power to decide whether there

shall or shall not be accommodation works. That question is determin- **Sect. 69.**
able by the High Court, and the question can be raised on an application
for a *mandamus* requiring the company to make accommodation works.
Reg. v. Waterford and Limerick Railway Company, 2 Ir. C. L. 580.

The High Court will not exercise a concurrent jurisdiction with the
justices as to the sufficiency of accommodation works either during the
construction of the railway or after its completion. *Hood v. North
Eastern Railway Company*, 11 Eq. 116.

An arbitrator or jury in assessing compensation for land severed have
no power to order accommodation works, or to award anything in respect
of the same. *Reg. v. South Wales Railway Company*, 13 Q. B. 988.

70. If for fourteen days next after the time appointed by **Execution**
such justices for the commencement of any such works the of works
company shall fail to commence such works, or having com- by owners
menced shall fail to proceed diligently to execute the same in on default
a sufficient manner, it shall be lawful for the party aggrieved by the
by such failure himself to execute such works or repairs; and company.
the reasonable expenses thereof shall be repaid by the com-
pany to the party by whom the same shall so have been
executed; and if there be any dispute about such expenses
the same shall be settled by two justices: Provided always,
that no such owner or occupier or other person shall obstruct
or injure the railway, or any of the works connected there-
with, for a longer time nor use them in any other manner
than is unavoidably necessary for the execution or repair of
such accommodation works.

71. If any of the owners or occupiers of lands affected by **Power to**
such railway shall consider the accommodation works made owners of
by the company, or directed by such justices to be made by land to
the company, insufficient for the commodious use of their make
respective lands, it shall be lawful for any such owner or additional
occupier at any time, at his own expense, to make such further accom-
modation works.
works for that purpose as he shall think necessary, and as
shall be agreed to by the company, or, in case of difference,
as shall be authorised by two justices.

72. If the company so desire, all such last-mentioned **Such**
accommodation works shall be constructed under the super- works to
intendence of their engineer, and according to plans and be con-
structed under the

Sect. 72. specifications to be submitted to and approved by such engineer ; nevertheless the company shall not be entitled to require either that plans should be adopted which would involve a greater expense than that incurred in the execution of similar works by the company or that the plans selected should be executed in a more expensive manner than that adopted in similar cases by the company.

Accommodation works not to be required after five years.

73. The company shall not be compelled to make any further or additional accommodation works for the use of owners and occupiers of land adjoining the railway after the expiration of the prescribed period, or, if no period be prescribed, after five years from the completion of the works, and the opening of the railway for public use.

If an accommodation work is made and considered sufficient at the time a railway is made, and is properly maintained as made, the landowner has no remedy if after five years he suffers damage by alleged insufficiency in the work constructed. *Colley v. London and North Western Railway Company*, 5 Ex. D. 277 ; *Ryan v. Great Southern and Western Railway Company*, 32 L. R. Ir. 15.

Owners to be allowed to cross until accommodation works are made.

74. Until the company shall have made the bridges or other proper communications which they shall under the provisions herein, or in the special Act, or any Act incorporated therewith, contained, have been required to make between lands intersected by the railway, and no longer, the owners and occupiers of such lands and any other persons whose right of way shall be affected by the want of such communication, and their respective servants, may at all times freely pass and repass, with carriages, horses, and other animals, directly (but not otherwise) across the part of the railway made in or through their respective lands, solely for the purpose of occupying the same lands, or for the exercise of such right of way, and so as not to obstruct the passage along the railway, or to damage the same ; nevertheless, if the owner or occupier of any such lands have in his arrangements with the company received or agreed to receive compensation for or on account of any such communications, instead of the same

being formed, such owner or occupier, or those claiming Sect. 74. under him, shall not be entitled so to cross the railway.

Where an owner of land severed by a railway claimed compensation from the company, and the jury awarded compensation on the footing that there was to be a total separation of his land without any communication being made, which compensation he received, this was held to be an arrangement within a section of the special Act corresponding to the above section, and it was further held that he was a trespasser if he afterwards crossed the line. *Manning v. Eastern Counties Railway Company*, 3 R. C. 637.

75. If any person omit to shut and fasten any gate set up at either side of the railway, for the accommodation of the owners or occupiers of the adjoining lands, as soon as he and the carriage, cattle, or other animals under his care have passed through the same, he shall forfeit for every such offence any sum not exceeding forty shillings. Penalty on persons omitting to fasten gates.

76. And be it enacted, that this or the special Act shall not prevent the owners or occupiers of lands adjoining to the railway, or any other persons, from laying down, either upon their own lands or upon the lands of other persons, with the consent of such persons, any collateral branches of railway to communicate with the railway, for the purpose of bringing carriages to or from or upon the railway, but under and subject to the provisions and restrictions of an Act passed in the sixth year of the reign of Her present Majesty, intituled *An Act for the better Regulation of Railways, and for the Conveyance of Troops*; and the company shall, if required, at the expense of such owners and occupiers and other persons, and subject also to the provisions of the said last-mentioned Act, make openings in the rails, and such additional lines of rail as may be necessary for effecting such communication, in places where the communication can be made with safety to the public, and without injury to the railway, and without inconvenience to the traffic thereon; and the company shall not take any rate or toll or other moneys for the passing of any passengers, goods, or other things along any branch so to be made by any such owner or occupier or other person; Power to parties to make private branch railways communicating with the railway. 5 & 6 Vict. c. 55.

Sect. 76. but this enactment shall be subject to the following restrictions and conditions ; (that is to say,)

Restrictions and conditions.

No such branch railway shall run parallel to the railway ;

The company shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere, nor upon any inclined plane or bridge, nor in any tunnel :

The persons making or using such branch railways shall be subject to all bye-laws and regulations of the company from time to time made with respect to passing upon or crossing the railway, and otherwise ; and the persons making or using such branch railways shall be bound to construct, and from time to time, as need may require, to renew, the offset plates and switches according to the most approved plan adopted by the company, and under the direction of their engineer.

Where a railway company has given permission to make an opening for a private siding, such permission is not a license, and after the private line has been made, it cannot be revoked. *Bell v. Midland Railway Company*, 3 De G. & J. 673.

As to renewing offset plates and switches, see *Woodruff v. Brecon, &c., Railway Company*, 28 Ch. D. 190.

And with respect to mines lying under or near the railway, be it enacted as follows :

Company not to be entitled to minerals.

77. The company shall not be entitled to any mines of coal, ironstone, slate, or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless the same shall have been expressly purchased ; and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

"With respect to Mines."—Under this heading are included sections 77—85. With these sections may be compared sections 18—27 of the *Waterworks Clauses Act, 1847 (post)*, which contain slightly different provisions in regard to mines.

In cases under these respective Acts, these clauses are to be regarded as a statutory code as to the relative rights of mine owners and companies where lands are compulsorily taken. They are intended to deal with every case, and to get rid of all the ordinary law as to the subject. *Great Western Railway Company v. Bennett*, L. R. 2 H. L. 27; *In re Lord Gerard and London and North Western Railway Company* [1895], 1 Q. B. 459, as to railways; and *Holliday v. Mayor of Wakefield* (1891), A. C. 81, as to waterworks. Sect. 77.

"Mines of Coal, Ironstone, Slate, or other Minerals."—The interpretation of these words in this section and in corresponding sections of other consolidating Acts has given rise to some conflict of judicial opinion.

According to the general law in England, a reservation of "minerals" includes every substance which can be got from underneath the surface of the earth for the purpose of profit, unless there is something in the context or in the nature of the transaction to give it a more limited meaning. *Hext v. Gill*, 7 Ch. 699, p. 712. It would thus include all substances (other than the agricultural surface of the ground) which may be got for manufacturing or mercantile purposes. *Midland Railway Company v. Checkley*, 4 Eq. 19. Some exception has been taken to the element of profit as not a necessary part of the definition. See per Lord HALSBURY in *Lord Provost of Glasgow v. Farie*, 13 A. C. 657, p. 670; and see per Lord HERSCHELL in *Midland Railway Co. v. Robinson*, 15 A. C. 19, p. 27. But the rule laid down in *Hext v. Gill* has been followed with approval as regards ordinary reservations in ordinary grants by the Court of Appeal in *Earl of Jersey v. Neath Guardians*, 22 Q. B. D. 555. According to the general law, therefore, minerals include clay and brick earth (*Earl of Jersey v. Neath Guardians, supra*; *Hext v. Gill, supra*), freestone and other stone usually got by quarrying (*Bell v. Wilson*, 1 Ch. 303; *Midland Railway Company v. Checkley*, 4 Eq. 19), and coprolites. *Attorney-General v. Tomlins*, 5 Ch. D. 750.

Such being the general law as to what are minerals, its application to this section is rendered more difficult by reason of the fact that the words are not "mines and minerals," but "mines of minerals." It is now clear, from a series of authorities, that the method of getting the mineral does not afford a criterion as to whether any particular layer of minerals constitute a mine. The word "mine" in this section is used in the widest sense that can be properly given to it, and it must be taken to signify all excavations by which the excepted minerals can be legitimately worked and got, whether by surface or underground working. *Midland Railway Company v. Robinson*, 15 A. C. 19, per Lords WATSON and HERSCHELL, pp. 28 and 34. In that case, Lord MACNAGHTEN considered that "mines" referred only to underground workings, adhering to an opinion to the same effect expressed in *Lord Provost of Glasgow v. Farie*, 13 A. C. 657; but although supported in that opinion by *obiter dicta*, the general course of the decisions has been in the opposite direction.

Thus it has been held in several cases that if the usual mode of a district to obtain the mineral is by digging, then such digging will be mining within this section; on this principle it has been decided that among the minerals to which a railway company shall not be entitled without purchase are included:—clay (*Midland Railway Company v. Haunchwood Brick and Tile Company*, 20 Ch. D. 552; *Tiverton v. Loosemore*, 22 Ch. D. 25, per FRY, J.; *Midland Railway Company v. Miles*, 33 Ch. D. 632; *Ruabon Brick, &c., Company v. Great Western Railway*

Sect. 77. *Company* (1893), 1 Ch. 427); and also limestone worked from the surface. *Midland Railway Company v. Robinson*, 15 A. C. 19; *Dixon v. Caledonian Railway Company*, 5 A. C. 820.

A freestone quarry has also been held in a Scotch case to be a mine within this section (*Jamieson v. North British Railway Company*, 6 Scot. L. R. 188), but apart from the statute, "mines and minerals," in Scotch law, would not include a freestone quarry. *Menzies v. Earl of Breadalbane*, 1 Shaw Ap. 225.

But not every scattered piece of mineral lying under land can be called a mine, but only mineral substances lying in seams, beds or strata. *Lord Provost of Glasgow v. Farie*, 13 A. C. 657, p. 685; explained in *Midland Railway Company v. Robinson*, 15 A. C. 19, p. 27. In *Farie's Case*, a bed of valuable clay, forming part of the surface or subsoil, was held to have passed to the company and not to be reserved to the landowner. Lord HERSCHELL dissented from the finding, and the judgments of the other three lords present were based on different grounds. Lord HALSBURY based his opinion on the ground that in Scotch law the word mine only included underground workings, and Lord MACNAGHTEN held generally that such was the proper meaning of "mine." Lord WATSON held, that the question whether it was a mine or not was independent of the manner of working, but that what a company acquires on purchasing the surface was the upper soil and subsoil, whether clay, sand, or gravel, and that clay forming part of the soil or subsoil passed to the company. To this view he adhered in *Midland Railway Company v. Robinson*, 15 A. C. 19, p. 34, adding that it would be more accurate to say that the expression "mines of coal, &c.," is used by the legislature to denote the minerals *in situ*, without reference to the manner in which they can be worked.

In *Ruabon Brick Company v. Great Western Railway Company* (1893), 1 Ch. 427, the clay came up nearly to the surface of the land, being only covered by a layer of surface soil from three to eight feet thick, but it was expressly reserved in the conveyance, and the point that it formed part of the surface does not appear to have been taken.

"Unless . . . expressly purchased." — Railway companies may purchase the mines compulsorily at the time they purchase the surface, as this section does not affect their power to purchase. They may also purchase them compulsorily after they have purchased the surface, if their time for compulsory purchase of land has not expired, and if they are necessary for the support of the surface. *Errington v. Metropolitan District Railway Company*, 19 Ch. D. 559. As to the question of support, see note to section 79, *infra*.

A railway company entering under section 85 of the Lands Clauses Act, 1845, is not bound to give a bond for the minerals, although the company may afterwards agree to purchase them, and payment of the price of the surface only will be a fulfilment of the bond. *Ex parte Neath Railway Company*, 2 Ch. D. 201.

A railway company may also purchase certain of the minerals, such as clay and gravel, and exclude others such as coal (*Lord Gerard v. London and North Western Railway Company* (1895), 1 Q. B. 459), and as it is doubtful how far the decision in *Lord Provost of Glasgow v. Farie*, 13 A. C. 657 (see note, *supra*), as to surface minerals, is applicable to cases under the English Railway Clauses Acts, railway companies will no doubt protect themselves from having to purchase the surface

minerals a second time by including clay and gravel in their notice to treat. If they are not included in the notice they cannot be included in the conveyance, although all the minerals known to be in the land are gravel and clay, and the land has been valued at a high price as building land. *Re Metropolitan District Railway Company v. Cotton's Trustees*, 45 L. T. 103. Sect. 77.

Where a company gives notice to treat for the land and minerals, there is no rule which imposes on a landowner the burden of proving by costly experiments the mineral contents of his land, and if there is sufficient evidence to justify a jury in coming to the conclusion that valuable minerals exist the verdict will not be disturbed, because the landowner has not proved that the minerals in fact do exist. *Brown v. Commissioner for Railways*, 15 A. C. 240; an appeal from New South Wales to the Privy Council.

If companies in constructing the railway dig up any of the clay, they will have to pay compensation for it; but the fact that they do so dig up part thereof is not to be taken as evidence of their intention to take the minerals. *In re Corporation of Huddersfield and Jacomb*, 10 Ch. 92. If a railway company in the construction of their works removes minerals, which it is not necessary to remove for the construction of the works, the landowner may bring an action for trespass, and is not limited to the remedy by compensation under section 6, *ante*, p. 307. *Loosemore v. Tiverton and North Devon Railway Company*, 22 Ch. D. 25, per FRY, J., on appeal on another point, 9 A. C. 480.

78. If the owner, lessee, or occupier of any mines or minerals lying under the railway, or any of the works connected therewith, or within the prescribed distance, or, where no distance shall be prescribed, forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give to the company notice in writing of his intention so to do thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the company to cause such mines to be inspected by any person appointed by them for the purpose; and if it appear to the company that the working of such mines or minerals is likely to damage the works of the railway, and if the company be willing to make compensation for such mines or any part thereof to such owner, lessee, or occupier thereof, then he shall not work or get the same; and if the company, and such owner, lessee, or occupier, do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation.

Mines lying near the railway not to be worked if the company willing to purchase them.

“Owner Lessee, or Occupier.”—The person entitled to give notice of his intention to work the mine is the owner, lessee, or occupier

Sect. 78. who at the time of giving the notice is entitled to work the mines. *Smith v. Great Western Railway Company*, 3 A. C. 165. If the owner is entitled to work them he may give the notice although he may have no intention of working them himself, but only by his lessees and licensees. *Midland Railway Company v. Robinson*, 15 A. C. 19.

"Be desirous of working."—There must be a real desire to work, and not merely a desire to compel the company to purchase the minerals. The expression of the desire is not enough, but it must be an honest, actual existence of the desire either by the owner or his lessees. If an owner gives a notice of his desire to work when it is obvious that there are no minerals, or that he cannot possibly intend either to let or work them himself, the Court will not allow it to be acted upon. *Midland Railway Company v. Robinson*, 15 A. C. 19, p. 32, and see *Dixon v. Caledonian Railway Company*, 5 A. C. 820, p. 839.

"Is likely to damage the works."—It is for the company to say whether or not the working of the mines is likely to damage the works. If the company, acting *bond fide* on the advice of the engineer or other proper adviser, considers the mines necessary for the support of the undertaking, the Court will not interfere to prevent the mines being purchased. The mine owner if he dispute the matter must shew *mala fides*, and the burden of proof will lie upon him. *Errington v. Metropolitan District Railway Company*, 19 Ch. D. 559, and see section 18 of the Lands Clauses Act, 1845, note "Lands required for the purposes of the undertaking," *ante*, p. 34.

"To make compensation."—In construing this section it must be read along with section 6, *supra*, p. 307, which provides that full compensation shall be made for lands taken or injuriously affected; and also that such compensation shall be ascertained and determined according to the Lands Clauses Consolidation Act. "Land" in section 6 includes mines. It follows, therefore, that when a lessee or occupier gives the notice and receives the compensation, he not only may not work the mines, but that other persons having an interest are to be compensated according to section 6 in respect of their interest, and being compensated they will not be entitled to work. *Smith v. Great Western Railway Company*, 3 A. C. 165. Inasmuch as the compensation is to be ascertained under the Lands Clauses Act, and not under the arbitration clauses of this Act, the provisions of the Lands Clauses Act as to costs, and as to the company taking up the award, will apply. *Reg. v. London and North Western Railway Company* (1894), 2 Q. B. 513. Claims arising wholly under section 81 are to be settled by arbitration only, and not under the Lands Clauses Acts, but if claims are made under section 78 wide enough to include claims under section 81 but not claimed as independent matters arising under section 81, the determination will be under the Lands Clauses Acts. Thus where mine owners gave notice of their intention to work and the railway company required certain pillars of coal to be left, and offered to treat for the purchase thereof, and the matters referred to arbitration included the price thereof, and compensation in respect of interruption of working and in respect of restrictions upon the working so as not to affect the railway, the arbitration was held to be under section 78, and, therefore, under the Lands Clauses Act. S.C.

When a railway company serves a notice to treat for the surface and certain of the minerals underneath, but the notice excludes others such

as coal, the landowner, in having the compensation ascertained, is not entitled to claim compensation in respect of the coal, on the ground that when he comes to work it he may not be able to do so without removing some of the other minerals. In such a case he would be entitled to work through and remove the other minerals, and he can have no claim for compensation in respect of the coal until he is desirous of working it, and gives notice of his desire under this section. *In re Lord Gerard v. London and North Western Railway Company* (1895), 1 Q. B. 459; cf. *Holliday v. Mayor of Wakefield* (1891), A. C. 81, a case under the Waterworks Clauses Act, 1847, and see the notes to section 6, and sections 18—27 of that Act, *post*.

If mines are injuriously affected by reason of the execution of the railway, the mine owner will no doubt be entitled to compensation in respect of such injurious affection; but if, in consequence of the works being improperly constructed and improperly maintained, damage is done to mines, the remedy is by action and not under this Act for compensation. Thus if drains are improperly made and maintained so that when afterwards mines are worked under the railway, these mines are flooded the mine owner has a remedy against the railway company for damages. *Bagnall v. London and North Western Railway Company*, 31 L. J. Ex. 121, 480. In a case under a canal Act, containing similar provisions as to mines, the canal company refused to purchase the mines; the mine owner continued to work with the result that water escaped from the canal and flooded the mine, he brought an action against the company for the damages suffered, but as he did not show that the canal was improperly made or conducted, it was held that no action lay. *Dunn v. Birmingham Canal Company*, L. R. 8 Q. B. 42. In that case, however, KELLY, C.B., and PIGGOTT, B., expressed the opinion that under the provisions of that Act the plaintiff would have been entitled to compensation. In cases of waterworks and similar undertakings, where injury may be done to mines by flooding if the mines are worked, special remedies are given to the mine owner. See Waterworks Clauses Act, 1847, ss. 25, 27, and notes thereto, and see *Holliday v. Mayor of Wakefield* (1891), A. C. 81, as to the effect of these sections.

Counter-notice by company.—On receipt of the notice from the owner, lessee, or occupier of his intention to work the mines, the company, if it is willing to make compensation, should send a counter-notice to the person sending the notice, stating that intention. *Smith v. Great Western Railway Company*, 3 A. C. 165. That counter-notice, however, is not required to be given within 30 days. It may be given at any time before all the minerals are worked out, and the company may thereby stop the mining operations at any stage, in which case the company will be required to pay full compensation for all damage occasioned by such stoppage. *Dixon v. Caledonian, and Great and South Western Railway Company*, 5 A. C. 820, not following a dictum of CAIRNS, L.C., in *Smith v. Great Western Railway Company*, *supra*.

79. If before the expiration of such thirty days the company do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines or any part thereof for which the company shall not have agreed to pay

Sect. 78.

If company unwilling to purchase, owner may work the mines.

Sect. 79. compensation, so that the same be done in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the district where the same shall be situate; and if any damage or obstruction be occasioned to the railway or works by improper working of such mines, the same shall be forthwith repaired or removed, as the case may require, and such damage made good, by the owner, lessee, or occupier of such mines or minerals, and at his own expense; and if such repair or removal be not forthwith done, or, if the company shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the company to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby, by action in any of the superior courts.

"Before the expiration of such thirty days."—The limitation of time is for the purpose simply of determining how long the mine owner's right of working shall be kept in abeyance or suspense, and not to limit the period within which the company must give the counter-notice. *Dixon v. Caledonian, &c., Railway Company*, 5 A. C. 820, and see note to last section.

"To work the said Mines."—The "said mines" are the "mines of coal, ironstone, slate, and other materials" mentioned in section 77, as to which see note. If the minerals *in situ* constitute a mine within the meaning of that section then the effect of this section is to enable the mine owner after thirty days to begin to work, to go on working, and to get all the minerals that he can until he is stopped and intercepted by a notice as to some part of the mine (see *Dixon v. Caledonian, &c., Railway Company*, 5 A. C. 820, p. 832), and provided he work in a proper manner and according to the usual manner of the district he may work them either by open or surface operations, or by underground excavations. *Midland Railway Company v. Robinson*, 15 A. C. 19; *Midland Railway Company v. Haunchwood Brick and Tile Company*, 20 Ch. D. 552; *Midland Railway Company v. Miles*, 33 Ch. D. 632. In so doing, if he is not stopped, he may remove the support subjacent and adjacent to the railway (see note *infra*, "Support"), and for the purpose of working he may, if it is the custom of the district, enter upon the surface he has conveyed to the company and remove that surface and work his minerals from above downwards, even although the effect may be to destroy the railway. *Ruabon Brick Company v. Great Western Railway Company* (1893), 1 Ch. D. 427, and for the sequel to this case see *Reg. v. Great Western Railway Company*, 69 L. T. 572. The same principle applies in the case where the company purchase not only the surface but all mines and minerals thereunder except mines of coal. In such a case the landowner may in working the coal mines, work through the minerals sold to the company, and

remove part of them and take away the support from the rest. *In re Sect. 79. Lord Gerard v. London and North Western Railway Company* [1895] 1 Q. B. 459.

Support.—It has been decided by a long series of cases that when under this Act a railway company purchases the surface, but not the mines, which are reserved to the landowner, that he may work these mines, and that the company are not entitled to sufficient support to the railway from the portion of the mines and minerals lying under or adjoining it without making compensation to the owner (*Great Western Railway Company v. Bennett*, L. R. 2 H. L. 27, affirming *Fletcher v. Great Western Railway Company*, 29 L. J. Ex. 253, and approving *Dudley Canal Company v. Grazebrook*, 1 B. & Ad. 59; *Wyrley Canal Company v. Bradley*, and *Stourbridge Canal Company v. Earl of Dudley*, 3 E. & E. 409), these last three cases being under special Acts containing provisions similar to those in this Act as to mines. See also the cases cited *infra* in this note.

According to the general law, when a landowner conveys land but reserves to himself the minerals, he cannot derogate from that grant and work the minerals in such a way as to destroy or permanently damage the surface unless he specially reserves that right in the conveyance. *Hezt v. Gill*, 7 Ch. 699; *Bell v. Earl of Dudley* [1895], 1 Ch. 182. This principle will be applicable to cases where land is sold to promoters of undertakings, where the minerals are reserved, provided there are no statutory or other provisions affecting the contract. Thus, independently of statute, if land is sold for the purpose of a railway being made upon it, there is impliedly sold all support, both subjacent and adjacent, that is required for the purpose of supporting that railway. *Caledonian Railway Company v. Sprot*, 2 Macq. Sc. Ap. 449; *Elliot v. North Eastern Railway Company*, 10 H. L. C. 333; *North Eastern Railway Company v. Crosland*, 32 L. J. Ch. 353; *London and North Western Railway Company v. Evans* [1893], 1 Ch. 16; and see the cases as to support of sewers in the notes to the Public Health Acts, 1875 and 1883, *post*; also see section 68 of the Lands Clauses Act, note "Support," *ante*, p. 140. And where a railway company by an Act incorporating the Railways Clauses Act took over land previously sold to a tramway company, with a reservation of minerals, together with all the rights under the tramway company's Act, the railway company was held to be entitled to an injunction to restrain the mine owners from taking away the support, and the mine owners were held entitled to no compensation under this section, inasmuch as in their conveyance to the tramway company they impliedly granted the right to support. *Great Western Railway Company v. Cefn Cribbwr Brick Company* [1894], 2 Ch. 157.

But if there are statutory provisions, such as in the case of the purchase of mines under this Act, these provisions are to be treated as a code which is to take the place of the general law. The object of these sections was to enable the parties to deal with the land as if there were no mines to be considered. If there are mines and the mine owner is desirous of working them, he is to be regarded as in the same position as if he had never sold the surface at all. If at the time he desires to work them, the railway company requires any of the minerals to be left for the purpose of support, subjacent or adjacent, then the company must pay compensation in respect thereof. It is, after all, merely a question as

Sect. 79. to the period of time at which railway companies must acquire and pay for the subjacent and adjacent support of their lines. *Great Western Railway Company v. Bennett*, L. R. 2 H. L. 27; *Midland Railway Company v. Robinson*, 15 A. C. 19. It makes no difference whether the support will be taken away by underground workings, or by open workings on the surface, if such open workings are the usual and proper method of working the minerals in the district. An injunction will not be granted, therefore, to restrain the mine owner from removing the minerals by quarrying or surface digging, nor will any action lie against him for damage done to the railway by so working. *Midland Railway Company v. Haunchwood Birch and Fils Company*, 20 Ch. D. 552; *Midland Railway Company v. Miles*, 33 Ch. D. 632; *Midland Railway Company v. Robinson*, 15 A. C. 19; *Ruabon v. Great Western Railway Company* [1893], 1 Ch. 427. The case of *Lord Provost of Glasgow v. Farie*, 13 A. C. 657, is no exception to this general rule, for in that case the mine owner was restrained from working the mineral—clay—not on the ground that it could only be worked properly by opened workings, but because it did not constitute a mine within the meaning of these sections. See note to section 77 as to the meaning of mines.

If a railway company having purchased the land without the mines, sells part of it as superfluous land, the purchaser will obtain no greater right than the railway company from whom he derived his title, and if the mine owner in removing the minerals lets down the surface and injures buildings upon it, the purchaser will have no remedy against him in respect thereof. *Courtney v. Clayton*, 11 Q. B. D. 820.

The principle is applicable even where the special Act provides that in working the mines no injury may be done to the works, as this proviso, taken with the other provisions, will be held merely to imply that the person working them must work them in the ordinary and usual mode, and not cause extraordinary or unnecessary damage. *Dudley Canal Company v. Grazebrook*, 1 B. & Ad. 59.

These sections are also applicable to a case where a landowner grants to a railway company the right to make and maintain a tunnel through his land. Such a grant will not prevent him from working his mines and removing the adjacent and subjacent support from the tunnel. If he is required to leave such support he is entitled to receive compensation in respect thereof. *London and North Western Railway Company v. Ackroyd*, 31 L. J. Ch. 588. Railway companies are not bound to purchase the support, and if from want of funds or otherwise they decline to do so, the mine owner may take away the support and destroy the railway, and the railway company in that case will not be bound to restore the line, as the powers of making and maintaining a line are in the absence of compulsory provisions enabling merely, and they have an option to maintain the works or not. *Reg. v. Great Western Railway Company*, 62 L. J. Q. B. 572.

If the working of the mines outside the prescribed distance would have the effect of destroying the support of the surface and of the works thereon, it would appear that the general law as to an owner not being allowed to derogate from his grant would apply, and that the owner would be restrained from taking away that support. See *Elliot v. North Eastern Railway Company*, 32 L. J. Ch. 402, a case under a special Act. In another case under a special Act, it was held that the provisions of the Act extended by implication to mines outside the prescribed limit, where necessary, for the support of the works. *Midland Railway Company v. Checkley*, 4 Eq. 19.

In cases of canals the decisions follow mainly upon the construction of particular statutes, and are not to be regarded as affecting the various Clauses Consolidation Acts. If the words of an Act make a mine owner liable, if he causes injury to a canal, he will be liable to an action for damages, and will be restrained by injunction if he proceed to work the mines so as to injure the canal, although the canal owners may refuse to purchase or pay compensation for leaving the coal, as he can initiate proceedings and compel them to do so. *Knowles and Sons v. Lancashire and Yorkshire Railway Company*, 14 A. C. 248; *Cromford Canal Company v. Cutts*, 5 R. C. 442. A canal company may, however, agree not to make any claim against the plaintiffs in respect of damage that may be done to the canal, in which case the mine owner may work his mine and cannot compel the canal owners to pay him compensation for leaving the coal. *Chamber Colliery Company v. Company of Proprietors of the Rochdale Canal* [1894], 2 Q. B. 633.

80. If the working of any such mines under the railway Mining communications. or works, or within the above-mentioned distance therefrom, be prevented as aforesaid by reason of apprehended injury to the railway, it shall be lawful for the respective owners, lessees, and occupiers of such mines, and whose mines shall extend so as to lie on both sides of the railway, to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain, and work their said mines, but no such airway, headway, gateway, or water level shall be of greater dimensions or section than the prescribed dimensions and sections, and where no dimensions shall be described not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the railway or works, or so as to injure the same, or to impede the passage thereon.

A railway company purchased some land without the minerals, and thereon constructed three lines of railway so as to form a triangle, part of the land being thus severed by the railways and the triangular part separated from the other land by the lines. Afterwards the company purchased the minerals under such portion of the land as was immediately underneath the lines, so that the landowner was left in possession of the mines within the triangle, which were clay, and could only be properly removed by surface workings. He gave notice of working this clay and of crossing the line of railway for that purpose. On an application for an *interim* injunction to restrain him from crossing the line, it was granted on the ground that it would injure the railway and impede the passage thereon, which a mine owner may not do under this section, but it was held that he would be entitled under this section to tunnel under

Sect. 80. the railway in order to work the minerals in the triangle, the company being bound to compensate him under section 81 for the extra expense of so working. *Midland Railway Company v. Miles*, 30 Ch. D. 634. At the trial of the action this was affirmed, it being held that the right of the owner of the mines in the triangle was to work the minerals in and under it by means of passages in or under the railway between that area and any mines lying on the other sides of the three lines, of which he was owner, lessee, or occupier. If he was not owner, lessee, or occupier of land on one side he could not work from that side, although he might have a right of way over such land, and he was entitled to no compensation in respect thereof. His right to compensation under section 81 would be the extra expense caused by reason of that mode of working, over and above what he would have been put to if he had worked the mines continuously. S. C., 33 Ch. D. 632, p. 648.

Company
to make
compensation for
injury
done to
mines ;

81. The company shall from time to time pay to the owner, lessee, or occupier of any such mines extending so as to lie on both sides of the railway all such additional expenses and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands lying over such mines by the railway, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the railway, and for any minerals not purchased by the company which cannot be obtained by reason of making and maintaining the railway ; and if any dispute or question shall arise between the company and such owner, lessee, or occupier as aforesaid, touching the amount of such losses or expenses, the same shall be settled by arbitration.

The compensation payable upon claims arising directly under this section is not to be ascertained and determined under the Lands Clauses Acts, but under the arbitration clauses in this Act. *Reg. v. London and North Western Railway Company* [1894], 2 Q. B. 512, p. 519 ; and see note to section 78, "To make compensation," *ante*, p. 362.

The mine owners are entitled to recover the additional expenses and losses caused by the railway being constructed before the same have actually been incurred, provided they are imminent and capable of present ascertainment. If not capable of ascertainment, the mine owner is probably left to his remedy from time to time after his actual outlay. *Whitehouse v. Wolverhampton Railway Company*, L. R. 5 Ex. 6, following a principle laid down in *Cromford Canal Company v. Cutts*, 5 R. C. 442. Similarly, if the mine owner claims compensation for injurious affection where part of his mines are taken, his claim must be under the mining sections, and if no interference with the mining operation has actually taken place, his claim under this section would

be premature. *Holliday v. Mayor of Wakefield* [1891], A. C. 81, pp. 93, 94, 97—99. If the injury to works connected with mining operations are directly and immediately occasioned by the taking of the surface, the mine owner will be entitled to have compensation ascertained along with the value of his interest in the surface (S. C., p. 98), and it may be done at the same time as the amount of compensation is ascertained under section 78. *Reg. v. London and North Western Railway Company* [1894], 2 Q. B. 512. Sect. 81.

In *Whitehouse v. Wolverhampton Railway Company*, *supra*, the lessee of the mines had been working them continuously from the south side to the north side of the railway, but owing to the intersection of the railway he had to change the site of a pit about to be sunk, as he had intended to place it in the centre of the strip taken by the railway. The site was convenient because it could be worked by the engine of an existing pit; the right to deposit spoil near the site had also been acquired. The new site occasioned by the railway being made could not be worked by the old engine. The lessee, in these circumstances, was held entitled to recover (1) the expense of engine and plant for the new pit; (2) the extra expense of working the engine; (3) the expense occasioned by change of site; (4) extra expense of raising pit frames and depositing spoil; (5) the cost of providing new land for spoil.

As to compensation in respect of having to tunnel under the railway to get at the minerals, see *Midland Railway Company v. Miles*, 33 Ch. D. 632, and note to section 80.

82. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines the working whereof shall have been so prevented as aforesaid (and not being the owner, lessee, or occupier of such mines), by reason of the making of any such airway or other work as aforesaid, which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the company shall make full compensation to such owner or occupier of the surface lands for the loss or damage so sustained by him. and also for any airway or other work made necessary by the railway.

83. For better ascertaining whether any such mines are being worked or have been worked so as to damage the railway or works, it shall be lawful for the company, after giving twenty-four hours notice in writing, to enter upon any lands through or near which the railway passes wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith; and for that purpose it shall be lawful for them to make use of any apparatus or machinery Power to company to enter and inspect the working of mines.

Sect. 83. belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the railway to the parts of such mines which are being worked or about so to be.

Penalty
for refusal
to inspect.

84. If any such owner, lessee, or occupier of any such mine shall refuse to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the company a sum not exceeding twenty pounds.

If mines
improperly
worked,
the com-
pany may
require
means to
be adopted
for the
safety of
the rail-
way.

85. If it appear that any such mines have been worked contrary to the provisions of this or the special Act, the company may, if they think fit, give notice to the owner, lessee, or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the railway, and preventing injury thereto; and if after such notice any such owner, lessee, or occupier do not forthwith proceed to construct the works necessary for making safe the railway, the company may themselves construct such works, and recover the expense thereof from such owner, lessee, or occupier by action in any of the superior courts.

86—107.

Sections 86—107 deal with the carrying of passengers and goods upon the railway and the tolls to be taken.

108—111.

Sections 108—111 deal with the regulating the use of the railway.

112, 113.

Sections 112, 113 deal with leasing the railway.

114—125.

Sections 114—125 deal with engines and carriages.

And with respect to the settlement of disputes by arbitration, Sect. 126. be it enacted as follows :—

This heading covers sections 126—137. Cf sections 25—37 of the Lands Clauses Consolidation Act, 1845, and notes thereto, and also the Arbitration Act, 1889, *post*.

126. When any dispute authorised or directed by this or the special Act, or any Act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the company, under the hand of the secretary or any two of the directors of the company, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate, under the common seal of such corporation, and such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matters so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties; and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

Appoint-
ment of
arbitrators
when
questions
are to
be deter-
mined by
arbitra-
tion.

127. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become

Vacancy
of arbi-
trator to

Sect. 127. incapable to act, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or incapacity as aforesaid.

Appoint-
ment of
umpire.

128. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under this or the special Act; and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Board of
Trade em-
powered to
appoint an
umpire, on
neglect of
the arbi-
trators.

129. If in either of the cases aforesaid the said arbitrators shall refuse, or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

In case of
death of
single
arbitrator
the matter
to begin
de novo.

130. If where a single arbitrator shall have been appointed, such arbitrator shall die, or become incapable to act, before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special Act, in the same manner as if such arbitrator had not been appointed.

If either
arbitrator
refuse to

131. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for seven days

neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

Sect. 128.
act the other to proceed *ex parte*.

132. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time, if any, as shall have been appointed for that purpose by both such arbitrators under their hands, the matter referred to them shall be determined by the umpire to be appointed as aforesaid.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

133. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Power for arbitrators to call for books, &c.

134. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him he shall, in the presence of a justice, make and subscribe the following declaration ; that is to say,

Arbitrator and umpire to make declaration.

“ I, *A. B.*, do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me, under the provisions of the Act [*naming the special Act*].
A. B.

“ Made and subscribed in the presence of .”
And such declaration shall be annexed to the award when made ; and if any arbitrator or umpire, having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

Sect. 132. **135.** Except where by this or the special Act, or any Act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators.

Submission to arbitration may be made a rule of court. **136.** The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

The award not to be set aside for matter of form. **137.** No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter or form.

Service of notices upon company. **138.** And be it enacted, that any summons or notice, or any writ, or other proceeding at law or in equity, requiring to be served upon the company, may be served by the same being left at or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary then by being given to any one director of the company.

Section 135 of the Companies Clauses Consolidation Act, 1845, is identical with this section. Section 134 of the Lands Clauses Consolidation Act, 1845, is similar, but not quite identical, see notes thereto, *ante*, p. 291.

“The Principal Office.”—The principal office of a railway company is that office where the general superintendence and management of the business of the railway is carried on. It does not matter how important another station may be at which there is an office, if the staff and the central government is elsewhere. Thus service upon the Great Western Railway Company at their office in Bristol was held bad, as the line was managed from Paddington. *Garton v. Great Western Railway Company*, E. B. & E. 837; *Palmer v. Caledonian Railway Company* (1892), 1 Q. B. 823, and cf. *In re Brown v. London and North Western Railway Company*, 4 B. & S. 326.

A railway company had the principal part of their line in Scotland and managed it from Glasgow, but a small portion was in England terminating at Carlisle. The company while incorporating the Scottish Consolidation Acts for the Scotch part, also incorporated the English Acts in respect of the part in England. It was held that it was a Scotch

company, that the principal office was at Glasgow, and that service at the Carlisle office was bad. It was also held that Order 9, r. 8, of the Rules of the Supreme Court had no application to cases where there is statutory provision as to service. *Palmer v. Caledonian Railway Company* (1892), 1 Q. B. 823; dissenting from *Wilson v. Caledonian Railway Company*, 5 Ex. 822; cf. *Mackereith v. Glasgow and South Western Railway Company*, L. R. 8 Ex. 149. Sect. 137.

“Or being given personally to the Secretary.”—Service personally upon the secretary of a Scotch company while in London would probably be good under the Scotch Companies Clauses Act, s. 137, but the English Act is not applicable. *Wilson v. Caledonian Railway Company*, 5 Ex. 822, dissented from in part in *Palmer v. Caledonian Railway Company* (1892), 1 Q. B. 823, and cf. *Evans v. Dublin and Drogheda Railway Company*, 14 L. J. Ex. 245.

139. And be it enacted, that if any party shall have com- Tender of
mitted any irregularity, trespass, or other wrongful proceeding amends.
in the execution of this or the special Act, or any Act
incorporated therewith, or by virtue of any power or authority
thereby given, and if before action brought in respect thereof
such party make tender of sufficient amends to the party
injured, such last-mentioned party shall not recover in any
such action; and if no such tender shall have been made it
shall be lawful for the defendant, by leave of the Court where
such action shall be pending, at any time before issue joined
to pay into Court such sum of money as he shall think fit,
and thereupon such proceedings shall be had as in other cases
where defendants are allowed to pay money into Court.

140—160.

Sections 140—160 deal with the recovery of penalties and are similar in effect to those in the Lands Clauses Act, 1845.

161.

Section 161 deals with moneys paid into the Bank of Ireland.

162, 163.

Sections 162, 163, deal with access to the special Act, and are similar in effect to sections 150, 151 of the Lands Clauses Act, 1845.

164.

Section 164 excludes Scotland from the application of the Act.

THE MARKETS AND FAIRS CLAUSES ACT, 1847.

10 & 11 VICT. CAP. 14.

An Act for consolidating in one Act certain provisions usually contained in Acts for constructing or regulating Markets and Fairs.
 [23rd April, 1847.]

Sect. 1. *[Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorising the construction or regulation of markets and fairs, and that as well as for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that]* (a) this Act shall extend only to such markets and fairs as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Extent of
Act.

(a) The preamble was repealed by the Statute Law Revision Act, 1891.

This Act may be incorporated in the same manner as the Lands Clauses Act, 1845. See section 5, *ante*, p. 10.

The clauses here set out alone deal with the subject of this book; the other sections deal with the holding and regulation of the market or fair.

* * * * *

And with respect to the construction of the market or fair, and the works connected therewith, be it enacted as follows :

6. Where by the special Act the undertakers shall be empowered, for the purpose of constructing the market or fair, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this Act and in the Lands Clauses Consolidation Act, 1845, when the special Act relates to England or Ireland, and to the provisions and restrictions contained in this Act and the Lands Clauses Consolidation (Scotland) Act, 1845, when the special Act relates to Scotland; and the undertakers shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the special Act, or injuriously affected by the construction of the works thereby authorised, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other persons by reason of the exercise, as to such lands, of the powers vested in the undertakers by this or the special Act, or any Act incorporated therewith; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the said Lands Clauses Consolidation Acts respectively for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last-mentioned Acts respectively shall be applicable to determine the amount of any such compensation, and to enforce payment or other satisfaction thereof.

Sect. 6.
Construction of markets and fairs to be subject to the provisions of this Act and one of the Lands Clauses Consolidation Acts, 1845.

The special Act.—By section 2 it is provided that “the expression ‘the special Act’ used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the construction or regulation of a market or fair, and with which this Act shall be incorporated.”

The lands are the lands authorised to be taken or used for the purposes of the special Act, and include messuages, lands, tenements, and hereditaments of any tenure. See definition in the Lands Clauses Act, 1845, and note, *ante*, p. 7.

The undertakers mean the persons authorised by the special Act to construct or regulate the market or fair. Section 2.

Sect. 7. 7. If any omission, mis-statement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands described or purporting to be described in the special Act, or in the schedule thereto, the undertakers, after giving ten days' notice to the owners, lessees, and occupiers of the lands affected by such proposed correction, may apply, in England or Ireland, to two justices, and in Scotland to the sheriff, for the correction thereof; and if it appear to such justices or sheriff that such omission, mis-statement, or wrong description arose from mistake, they or he shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate shall be deposited, in England or Ireland, with the clerk of the peace, and in Scotland with the sheriff clerk of the county in which the lands affected thereby shall be situated, or, where any such lands are situated in a royal burgh in Scotland, with the town clerk of such burgh; and such certificate shall be kept by such clerk of the peace, sheriff clerk, or town clerk with the other documents to which they relate, and thereupon the special Act or schedule shall be deemed to be corrected according to such certificate, and the undertakers may make the works in accordance with such certificate as if such omission, mis-statement, or wrong description had not been made.

Errors and omissions in special Act or schedules thereto, may be corrected by justices, &c., who shall certify the same.

Certificate to be deposited.

Compare the almost identical provision in section 7 of the Railways Clauses Act, 1845, *ante*, p. 309.

Copies of alterations, &c., to be evidence.

8. Copies of any such alteration or correction thereof or extracts therefrom, certified by any such clerk of the peace, sheriff clerk, or town clerk, in whose custody the same may be, which certificate such clerk shall give to all parties interested when required, shall be received in all courts of justice and elsewhere as evidence of the contents thereof.

Additional land may be taken for extraordinary purposes.

9. The undertakers, in addition to the lands authorised to be taken compulsorily or to be appropriated by them for the purposes of the market or fair under the powers of this and the special Act, may appropriate any lands vested in them, or

may contract with any person willing to sell the same for the purchase of any land within the limits of the special Act, not exceeding in the whole the prescribed number of acres for extraordinary purposes; (that is to say,) Sect. 9.

For providing slaughter-houses (if the undertakers shall be authorised by the special Act to provide slaughter-houses), and houses and places for weighing carts.

For making convenient roads and approaches to the market or fair.

For any other purpose which may be necessary for the formation or convenient use of the market or fair.

Compare the corresponding provision in section 45 of the Railways Clauses Act, 1845, and see notes thereto, *ante*.

By the Public Health Act, 1875, ss. 166—169, urban sanitary authorities—now urban district councils—are empowered in certain cases to provide a market place and market house, and other conveniences, and also a slaughter-house, and to purchase or take on lease lands for the purpose. The sections of this Act with respect to the construction of the market or fair, and the works connected therewith, are not incorporated. Lands may, however, be taken or purchased for the purposes of that Act as provided in sections 175, 176. See *post*.

The Public Health Act, 1875, however, does not authorise any provision for providing land for a fair.

As to slaughter-houses, see section 17 of this Act, *post*.

By the Markets and Fairs (Weighing of Cattle) Act, 1887 (50 & 51 Vict. c. 27), amended by the Markets and Fairs (Weighing of Cattle) Act, 1891, market authorities, unless exempted by order of the Board of Agriculture, must provide suitable accommodation for weighing cattle.

10. Subject to the provisions in this and the special Act and any Act incorporated therewith, the undertakers, for the purpose of constructing a place for holding the market or fair, may execute any of the following works; (that is to say,) Under-takers subject to provisions of this and the special Act may execute the works herein named.

They may enter upon any lands described in the special Act or the schedule thereto, and other lands purchased by them, or belonging to them, and set out such parts as they think necessary for the purposes of the market or fair, and thereupon from time to time build and maintain such market places or places for fairs, and such stalls, sheds, pens, and other buildings or conveniences for the use of the persons frequenting the market or fair, and for weighing and

Sect. 10. measuring goods sold in the market or fair, and for weighing carts, as they may think necessary.

They may from time to time on such lands as aforesaid make and maintain all such roads and approaches as they may think necessary for the convenient use of the persons resorting to the market or fair.

If land is described in the schedule, the undertakers are the proper parties to say whether it is necessary or not, and if wanted for the purpose of erecting a covered building for market purposes, as well as the market house, it will be wanted for the purposes of the special Act, as by this Act the singular may mean the plural if not repugnant, and there may be two market houses if required. *Richards v. Scarborough Public Market Company*, 23 L. J. Ch. 110.

Under-
takers to
make satis-
faction for
damage
done.

11. Provided always, that in the exercise of the powers by this or the special Act granted, the undertakers shall do as little damage as can be, and shall make full satisfaction in manner herein, and by the special Act and any Act incorporated therewith provided, to all parties interested for all damages sustained by them by reason of the exercise of such powers.

Compare the similar provision in the proviso to section 16 of the Railways Clauses Act, 1845, *ante*, p. 316, and see the cases there cited. The subjects of compensation are doubtless land and interests in land although the terms of this section would appear to be more extensive. Cf., section 308 of the Public Health Act, 1875, *post*.

* * * *

And with respect to slaughter-houses, be it enacted as follows :

Power to
erect
slaughter-
houses if
authorised
by the Act.

17. Where by the special Act the undertakers shall be empowered to provide slaughter-houses, they may from time to time erect on any land purchased by them under the provisions of this or the special Act or any Act incorporated therewith, any buildings, or set apart and improve any buildings belonging to them for the slaughtering of cattle
. . .

No exemp-
tion from
indict-
ments.

18. Provided that nothing in this or the special Act or any Act incorporated therewith shall protect the undertakers

from an indictment for nuisance, or from any other legal proceeding in respect of any such slaughter-house as aforesaid. **Sect. 18.**

As the undertakers are not given statutory power to create a nuisance, the fact that they have taken all reasonable care to prevent a slaughter-house from being a nuisance will not be a legal excuse if it in fact is one. See *Rapier v. London Tramways Company* (1893), 2 Ch. 588, and see the notes to section 68 of the Lands Clauses Act, 1845, p. 129, and cf. *Mew's Brewery Company v. City of London Electric Lighting Company*, 70 L. T. 762.

Sections 58 and 59 deal with access to the special Act and are identical with sections 90 and 91 of the Waterworks Clauses Act, *post*.

THE WATERWORKS CLAUSES ACT, 1847.

10 & 11 VICT. c. 17.

An Act for consolidating in one Act certain provisions usually contained in Acts authorising the making of Waterworks for supplying Towns with Water.

[23rd April, 1847.]

* * * * *

This Act applies only to such waterworks as have been authorised by Act of Parliament passed after the 23rd of April, 1847, and which declare that this Act is incorporated therewith. Section 1.

A group of clauses may be incorporated or excepted in a special Act in the same manner as under the Lands Clauses Consolidation Act, 1845. See section 5, *ante*.

The groups of clauses here set out and which alone bear on this subject are—

1. With respect to the construction of the waterworks. Sections 6—15.
2. With respect to the construction of works for the accommodation of lands adjoining the waterworks. Sections 16, 17.
3. With respect to mines. Sections 18—27.
4. With respect to access to the special Act. Sections 90, 91.

The Waterworks Clauses Act, 1863, has no application to this subject.

And with respect to the construction of the waterworks, be it enacted as follows :(a)

Sect. 6. 6. Where by the special Act the undertakers shall be empowered, for the purpose of constructing or supplying waterworks, to take or use any lands or streams otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the powers so given to them, be subject to the provisions and restrictions contained in this Act, and if the waterworks be situated in *England* or *Ireland*, to the provisions and restrictions contained in the Lands Clauses Consolidation Act, 1845, and if the waterworks be situated in *Scotland*, the provisions and restrictions contained in the

Construction of water-works to be subject to the provisions of this Act and the Lands Clauses Consolidation Acts, 1845.

Lands Clauses Consolidation, *Scotland*, Act, 1845 ; and shall Sect. 6.
 make to the owners and occupiers of and all other parties
 interested in any lands or streams taken or used for the
 purposes of the special Act, or injuriously affected by the
 construction or maintenance of the works thereby authorised,
 or otherwise by the execution of the powers thereby conferred,
 full compensation for the value of the lands and streams so
 taken or used, and for all damage sustained by such owners,
 occupiers, and other persons, by reason of the exercise, as to
 such lands and streams, of the powers vested in the under-
 takers by this or the special Act, or any Act incorporated
 therewith ; and except where otherwise provided by this or
 the special Act, the amount of such compensation shall be
 determined in the manner provided by the said Lands Clauses
 Consolidation Acts respectively for determining questions of
 compensation with regard to lands purchased or taken under
 the provisions thereof, and all the provisions of the said last-
 mentioned Acts respectively shall be applicable to determine
 the amount of any such compensation, and to enforce payment
 or other satisfaction thereof.

(a) This heading includes sections 6—15.

"The Special Act."—By section 2 it is provided that "the expression 'the special Act' used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the construction of waterworks and with which this Act shall be incorporated."

"The Undertakers."—Section 2 also provides that "the undertaking" shall mean "the waterworks and works connected therewith by the special Act authorised to be constructed," and "the undertakers" shall mean "the persons by the special Act authorised to construct the waterworks." Section 3 provides also that "the waterworks" shall have the same meaning as "the undertaking."

"Lands or Streams."—The definition of lands is practically identical with that in the Lands Clauses Consolidation Act, 1845, s. 3, *ante*, p. 5, and in the Railways Clauses Act and in this section lands include "mines." *Holliday v. Mayor of Wakefield* (1891), 1 A. C. 81. Section 3 provides that "the word 'streams' shall include springs, brooks, rivers, and other running waters."

"Full Compensation for the Value of the Lands and Streams so taken or used."—With this section may be compared the somewhat similar provision in the Railways Clauses Act, 1845, s. 6, *ante*, p. 307.

Sect. 6. When land is taken the principles of compensation will be found in section 63 of the Lands Clauses Consolidation Act, 1845, and the notes thereto, *ante*, p. 110; when no land is taken, the principles of compensation for injuriously affecting land will be found in the notes to section 68, *ante*, p. 129.

As regards streams, this section draws the same distinction which the Lands Clauses Acts do as regards lands. If a stream is taken, the compensation must be assessed according to the principles laid down in section 63 of the Lands Clauses Consolidation Act, 1845, and notes; if injuriously affected, compensation must be made under section 68 of that Act. *Ferrand v. Corporation of Bradford*, 21 Beav. 412. The complete diversion of a stream is a taking or using of the stream, and if promoters of an undertaking desire to divert a stream for the purposes of the undertaking, they must give a notice to treat under section 18 of the Lands Clauses Consolidation Act, 1845, and proceed to have the price determined as provided thereafter, or they may enter on making a deposit and giving a bond as provided in section 85 of that Act. If they do not proceed in one or other of these ways the owner will be entitled to an injunction to restrain them. S. C.

The entry upon the bed of a stream and diverting part of the stream would be, as regards the proprietor who owned the bed, a taking of the lands and stream, but as regards a riparian proprietor lower down the stream, his rights would be only for compensation for diverting water which would otherwise have reached him. This would be an injurious affection of his land and he would be entitled to compensation under section 12 of this Act, and the procedure to ascertain the amount would be that provided in section 68 of the Lands Clauses Consolidation Act, 1845. *Bush v. Trowbridge Waterworks Company*, L. R. 10 Ch. 459; *Page v. Kettering Waterworks Company*, 8 "Times" L. R. 228, and see notes to section 12, *post*.

If promoters have power to divert the whole of a stream and give notice of their intention to do so to a riparian owner, he is entitled at once to be paid the full price for the same, and he is not bound to wait till the stream has been diverted and apply for compensation from time to time as the promoters may happen to want the water. *Stone v. Corporation of Yeovil*, 2 C. P. D. 99. Similarly, if promoters purchase a stream, but do not within the time limited for the execution of the works, divert or take it, the property is nevertheless in them and they may divert it without further compensation, if empowered to carry out works by another statute. *Girdwood v. Belfast Water Commissioners*, 1 L. R. Ir. 28.

"Owners and Occupiers and other Persons Interested."—All persons having interest in lands or streams taken or used must be compensated, and the same rule is applicable if the special Act authorises water to be taken from a loch. Thus, where a proprietor had granted permission to certain mills on a stream forming the outlet to two lochs nearly surrounded by his property, reserving his rights in the lochs, except the rights connected with the mills, it was held that promoters of waterworks could not, by acquiring the rights of the grantee in the water, draw off the water from the lochs for the supply of a town, as they were thereby depriving the landowner of his rights in the water. *Lord Blantyre v. Babbie*, 12 A. C. 631.

As regards underground water, see *Corporation of Bradford v. Pickles* Sect. 6. (1895), 1 Ch. 145, and notes to section 12, *post*, p. 388.

Measure of Compensation.—In estimating the value of a stream, it is necessary to take into account the use to which it can be put relatively to the land. Practically speaking, the value of water must be measured by the deterioration of the value of the land occasioned by its loss. Its value for fishing should be taken into account and also its availability for purposes of irrigation, watering cattle, turning a mill, or as ornamental water. *Stone v. Corporation of Yeovil*, 2 C. P. D. 99. If a stream may be adapted for purposes other than for which it has been used, that adaptability should be taken into account in estimating the value although the owner may never have obtained one farthing for the use of the stream. Evidence, therefore, of an offer by another water company to purchase the stream ought not to be rejected. *Trent-Stoughton v. Barbados Water Supply Company* (1893), A. C. 502. As to adaptability as an element of value in ascertaining the compensation, see *Arbitration between Countess Ossalinsky and Corporation of Manchester*, a report of which will be found in Appendix IV., *post*.

If promoters of waterworks are empowered to take water from a loch, the water of which is partly retained therein by an artificial embankment, the fact that it is so retained is a proper subject for an arbitrator to take into account in assessing the value of the water. The price of water in an artificial reservoir cannot be estimated on the same principles as that of water in a wholly natural basin; the cost of works for storing it must be taken into account. *Lord Blantyre v. Babbie*, 13 A. C. 631.

7. If any omission, mis-statement, or wrong description shall have been made of any lands or streams, or of the owners, lessees, or occupiers of any lands or streams, described on the plans or books of reference deposited in compliance with the Standing Orders of either House of Parliament, or in the schedule to the special Act, the undertakers, after given ten days' notice to the owners, lessees, and occupiers of the lands and streams affected by such proposed correction, may apply, in *England* or *Ireland*, to two justices, and in *Scotland* to the sheriff, for the correction thereof; and if it appear to such justices or sheriff that such omission, mis-statement, or wrong description arose from mistake, they or he shall certify the same accordingly; and shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate, with the other documents to which it relates, shall be deposited, in *England* or *Ireland*, with the clerk of the peace, and in *Scotland* with the sheriff clerk of the several counties

Errors and omissions in plans, &c., may be corrected by justices, &c., who shall certify the same.

Certificate, &c., to be deposited.

Sect. 7. in which the lands or streams affected thereby are situated, or, where any such lands or streams are situated in a Royal burgh in *Scotland*, with the town clerk of such burgh; and such certificate shall be kept by such clerks of the peace, sheriff clerks, or town clerks respectively with the other documents to which they relate; and thereupon such plan, book of reference, or schedule shall be deemed to be corrected according to such certificate; and the undertakers may make the works in accordance with such certificate, as if such omission, mis-statement, or wrong description had not been made.

See the somewhat similar provision in the Railways Clauses Act, 1845, s. 7, and the notes thereto, *ante*, p. 309. In respect of interests in land, which have by mistake been omitted to be purchased, see section 124 of the Lands Clauses Act, 1845, *ante*, p. 272.

Works not to be proceeded with until plans of all alterations authorized by parliament have been deposited.

8. The undertakers shall not begin to execute the waterworks unless they shall have previously deposited with the clerk of the peace in *England* or *Ireland*, and the sheriff clerk in *Scotland*, of every county, and the town clerk of every Royal burgh in *Scotland*, in which the waterworks shall be situated, a plan and section of all such alterations from the original plan and section (if any) as shall have been approved of by Parliament, on the same scale and containing the same particulars as the original plan and section of the waterworks, and shall also have deposited with the parish clerks of the several parishes in *England*, and the clerks of the unions of the several parishes in *Ireland*, and the schoolmasters of the several parishes in *Scotland*, in which such alterations shall have been authorised to be made, copies or extracts of or from such plans and sections as shall relate to such parishes respectively.

Cf., section 8 of the Railways Clauses Act, 1845, *ante*, p. 310.

Clerks of the peace, &c., to receive plans of alterations, &c., and allow inspection.

9. The said clerks of the peace, sheriff clerks, and town clerks, parish clerks, clerks of unions, and schoolmasters, shall receive the said plans and sections of alterations, and copies and extracts thereof respectively, and shall keep the same, as well as the said original plans and sections, and shall allow all persons interested to inspect any of the

documents aforesaid, and to make copies and extracts of and from the same, in the like manner and upon the like terms, and under the like penalty for default, as is provided in the case of the original plans and sections by an Act passed in the first year of the reign of Her Majesty, intituled *An Act to compel Clerks of the Peace for Counties, and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.*(a) Sect. 9.
7 Will. 4 &
1 Vict.
c. 83.

(a) The Parliamentary Deposit Act, 1837.

10. Copies of the said plans and books of reference, or of any alteration or correction thereof or extracts therefrom, certified by any such clerk of the peace, sheriff clerk, or town clerk, which certificate such clerk shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof. Copies of
plans and
altera-
tions, &c.,
to be
evidence.

11. The undertakers in constructing the waterworks shall not deviate from the line of the works laid down in the said plan more than the prescribed number of yards, and where no number of yards is prescribed not more than ten yards, nor in any case to any greater extent than the line of lateral deviation described in the said plans with respect to such works, nor take nor use, for the purpose of such deviation, the lands of any person not mentioned in the books of reference, without his previous consent in writing, unless the name of such person shall have been omitted by mistake, and the fact that such omission happened from mistake shall have been certified in manner hereinbefore provided. Not to
deviate
beyond
limits de-
fined upon
plans, &c.

Compare sections 14 and 15 of the Railways Clauses Act, 1845, and see the cases as to deviation in the notes thereto, *ante*, p. 314.

A special Act empowered commissioners to take water from a river for the supply of a township on condition of their constructing (*inter alia*) a reservoir with conduit to supply compensation water to mill-owners. The position, contour, and capacity of the reservoir and the height of the embankment were prescribed by the act, with the usual provision for deviation. In constructing the reservoir, the commissioners curtailed it by more than one-third of its length and nearly two-thirds of its capacity, and placed the embankment higher up the river

Sect. 11. than the point fixed by the Act, and so that the capacity could not be enlarged in the event of the supply of compensation water proving insufficient. The conduit was not made according to the Act, but was said to be substantially equivalent. In an action by the millowners, it was held that, although no actual damage was proved, they were entitled to a declaration that the reservoir and conduit were not in accordance with the provisions of the Act, and to an injunction restraining the commissioners from taking or using the waters of the river or from interfering with the flow of the river otherwise than as authorised by the Act. *Herron v. Rathmines Improvement Commissioners* (1892), A. C. 498.

Under-
takers,
subject to
provisions
of this
and the
special
Act, may
execute
the works
herein
named.

12. Subject to the provisions and restrictions in this and the special Act, and any Act incorporated therewith, the undertakers may execute any of the following works for constructing the waterworks ; (that is to say,)

They may enter upon any lands and other places described on the said plans and in the said books of reference, and take levels of the same, and set out such parts thereof as they shall think necessary, and dig and break up the soil of such lands, and trench and sough the same, and remove or use all earth, stone, mines, minerals, trees, or other things dug or gotten out of the same :

They may from time to time sink such wells or shafts, and make, maintain, alter, or discontinue such reservoirs, waterworks, cisterns, tanks, aqueducts, drains, cuts, sluices, pipes, culverts, engines, and other works, and erect such buildings, upon the lands and streams authorised to be taken by them, as they shall think proper, for supplying the inhabitants of the town or district within the prescribed limits with water :

They may from time to time divert and impound the water from the streams mentioned for that purpose in the special Act, or the said plans or books of reference, and alter the course of any such streams, not being navigable, and also take such waters as may be found in and under or on the lands to be taken for constructing the works :

Under-
takers to
make com-

Provided always, that in the exercise of the said powers the undertakers shall do as little damage as can be, and in all

cases where it can be done shall provide other watering places, drains, and channels for the use of adjoining lands, in place of any such as shall be taken away or interrupted by them, and shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers. Sect. 12.
—
penation
for
damages.

Compare the similar proviso in the case of railways in section 16 of the Railways Clauses Act, 1845, *ante*, p. 316, and see the notes thereto, and also see the notes to section 18 of the Lands Clauses Act, 1845, *ante*, pp. 34—40, for the cases relating to land authorised to be taken and for the purposes of the undertaking.

The undertakers can only take the land they are authorised to take and for the construction of the works authorised to be made. They cannot, under this section, take land for collateral and auxiliary works unless the special Act authorises them to do so. *Simpson v. South Staffordshire Waterworks Company*, 34 L. J. Ch. 381, p. 390.

As to the rights of riparian owners, see Michael and Wills on "Gas and Water," 4th edit., pp. 199 *et seq.*

"For all damage sustained."—This section corresponds in effect to section 68 of the Lands Clauses Act, 1845, *ante*, p. 129, and if no lands or streams are taken but either are injuriously affected, the person who suffers damage is entitled to compensation under this section; but in such cases the assessment and payment of compensation need not be made until after the injury has been committed. Thus, the diversion of part of a stream which would have flowed through the plaintiff's land is an injurious affecting. *Bush v. Trowbridge Waterworks Company*, L. R. 10 Ch. 459, and see notes to section 6 of this Act, *ante*, p. 383. If, however, brooks running into a river are diverted, but the bulk of the water is returned into the river above where certain mills are situated, the millowners are only entitled to be compensated in respect of the water actually abstracted from the volume of the river and not for the whole amount originally diverted. *Page v. Kettering Waterworks Company*, 8 Times L. R. 228.

For the principles of compensation see notes to section 68 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 129.

If promoters of waterworks endeavour to deprive any person having common law rights of these rights, they must pay for them. Thus, where promoters obtained water from certain springs, and a section of their Act provided that no person should do any act whereby the waters of these springs should be diminished, and they refused to purchase the rights of the owner of the hill from which these springs issued, he was held to be entitled to tunnel through the hill and drain the water from the springs, and the Court refused an injunction to restrain him. *Corporation of Bradford v. Pickles* (1895), 1 Ch. 145, and see as to underground water, *Chasemore v. Richards*, 7 H. L. O. 349; *Acton v. Blundell*, 12 M. & W. 324, 354, and cf. *Grand Junction Canal Company v. Shugar*, 6 Ch. 483.

As the owner of land has no right to underground water flowing in undefined channels, he cannot recover compensation if it is drained off from beneath his land. *New River Company v. Johnson*, 2 E. & E. 435; *R. v. Metropolitan Board of Works*, 3 B. & S. 277.

Sect. 123. If a waterworks company stop up a stream at a certain point they are entitled to the full flow of water existing at this point at the time they were authorised to do so, but they have no right to stop a person using water above who at that time was authorised to do so, and a person who makes an artificial cutting, and so brings water to a stream which did not go there before, can *prima facie* cut it off if he chooses. *Brymbo Water Company v. Lester's Lime Company*, 8 R. 329.

See also section 6 of this Act and notes thereto, *ante*, p. 382.

Penalty
for ob-
structing
construc-
tion of
works.

13. Every person who shall wilfully obstruct any person acting under the authority of the undertakers in setting out the line of the works, or pull up or remove any poles or stakes driven into the ground for the purpose of setting out the line of such works, or deface or destroy any works made for the same purpose, shall be liable to a penalty not exceeding five pounds for every such offence.

Penalty
for
illegally
diverting
water.

14. After the streams or supplies of water hereby or by the special Act authorised to be taken by the undertakers shall have been so taken, every person who shall illegally divert or take the waters supplying or flowing into the streams so taken, or any part thereof, or who shall do any unlawful act whereby the said streams or supplies of water may be drawn off or diminished in quantity, and who shall not immediately repair the injury done by him, on being required so to do by the undertakers, so as to restore the said waters to the state in which they were before such act, shall forfeit to the undertakers any sum which shall be awarded, in *England* or *Ireland*, by two justices, and in *Scotland* by the sheriff, not exceeding five pounds for every day during which the said supply of water shall be diverted or diminished by reason of any act done by or by the authority of such person, and any sum so forfeited shall be in addition to the sum which he may be lawfully adjudged liable to pay to the undertakers for any damage which they may sustain by reason of their supply of water being diminished; and the payment of the sum so forfeited shall not bar or affect the right of the undertakers to bring or raise an action at law against such person for the damage so committed.

The effect of this section is not to limit a landowner's right in a stream or other water if he has not been compensated in respect thereof. See *Corporation of Bradford v. Pickles* (1895), 1 Ch. 145.

15. Provided always, that nothing herein contained shall **Sect. 15.**
 prevent the owners and occupiers for the time being of lands Reserva-
 tion of
 rights
 unless
 compen-
 sation
 received.
 through or by which such streams shall flow from using the
 waters thereof in such manner and to such extent as they
 might have done before the passing of the special Act, unless
 they shall have received compensation in respect of their right
 of so using such water.

And with respect to the construction of works for the
 accommodation of lands adjoining the waterworks, be it
 enacted as follows :

16. Where by the special Act the undertakers shall be Differ-
 ences as to
 the con-
 struction
 of accom-
 modation
 works to
 be settled
 by justices.
 required to erect any works for making good the interruption
 caused to any lands adjoining or near the waterworks, or
 otherwise, for the accommodation of such lands, then if any
 difference shall arise respecting the construction of any such
 accommodation works, or the kind or size or sufficiency
 thereof, or respecting the maintenance thereof, the same shall
 be determined in *England* or *Ireland* by two justices, and in
Scotland by the sheriff, and such justices or sheriff shall also
 appoint the time within which such accommodation works
 shall be begun and finished by the undertakers.

As to accommodation works generally, see the Railways Clauses Act,
 1845, ss. 68—75, and the notes thereto, *ante*, pp. 351—357. From the
 cases there cited it will be seen that lands may be taken compulsorily
 for accommodation works, as they are part of the works authorised to
 be executed.

17. If the undertakers shall for fourteen days next after If under-
 takers fail
 to execute
 such
 works,
 persons
 aggrieved
 may per-
 form the
 same and
 charge the
 expense
 to the un-
 dertakers.
 the time appointed by such justices or sheriff, for the begin-
 ning of any such accommodation works fail to begin such
 works, or, having begun such works, fail diligently to execute
 the same in a sufficient manner, the person aggrieved by such
 failure may execute such works or repairs ; and the reason-
 able expenses thereof shall, on demand, be repaid by the
 undertakers to the person by whom the same shall so have
 been executed ; and if there be any dispute about the amount
 or nature of such expenses, the same shall be settled in

Sect. 17. *England or Ireland* by two justices, and in *Scotland* by the sheriff.

And with respect to mines, be it enacted as follows : (a)

Under-
takers not
entitled to
mines
unless
expressly
purchased.

18. The undertakers shall not be entitled to any mines of coal, ironstone, slate, or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the waterworks, unless the same shall have been expressly purchased, and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

(a) This heading covers sections 18—27. These sections have been incorporated into the Public Health Act, 1875, for support of sewers, &c., by the Public Health Act, 1883 (46 & 47 Vict. c. 127), *post*.

This section is practically identical with section 77 of the Railways Clauses Act, 1845, *ante*, p. 358. Sections 77—85 of that Act deal with the law in respect to mines under railways. The cases in relation to compensation for mines are collected in the notes thereto. See also section 6 of this Act, *ante*, p. 382. Sections 18—25 of this Act are in many respects identical with the sections of that Act. The material differences are indicated in the notes hereto.

Map and
plan of
under-
ground
works of
under-
takers to
be made.

19. The undertakers shall from time to time, within six months from the time at which any pipes, conduits, or underground works shall have been laid down or formed by them, cause a survey and map to be made of the district within which any such pipes or underground works shall be laid, on a scale not less than one foot to a mile, and shall cause to be marked thereon the course and situation of all existing pipes or conduits for the collection, passage, or distribution of water and underground works belonging to them, in order to show all such underground works within the said district, and shall, within six months from the making of any alterations or additions, cause the said map to be from time to time corrected, and such additions made thereto as may show the line and situation of all such pipes, conduits, and underground works as may be laid down or formed by them from time to time after the passing of the special Act, and such map and

plan, or a copy thereof, with the date expressed thereon of **Sect. 19.**
the last time when the same shall have been so corrected as
aforesaid, shall be kept in the office of the undertakers, and
shall be open to the inspection of all persons interested in the
same within the said district.

20. The undertakers shall, from time to time, within Copies of
such map
or plan to
be de-
posited
with clerk
of the
peace, &c.
three months from the time at which any such map or
plan, or any such correction thereof or addition thereto, shall
have been made as aforesaid, deposit with the clerks of the
peace in *England* or *Ireland*, and with the sheriff clerks in
Scotland, of every county, and the town clerk of every burgh
in *Scotland*, in which such district or any part thereof may
be situate, and also with the parish clerks of the several
parishes in *England*, and clerks of the union of the several
parishes in *Ireland*, and the schoolmaster of the several
parishes in *Scotland*, in which such underground works shall
be situate, copies of the said map or plan, with all such
particulars, and all such corrections and additions as afore-
said, so far as relates to such counties, burghs, and parishes
respectively.

21. The said clerks of the peace, sheriff clerks, and town Clerks of
the peace,
&c., to
receive
and keep
copies of
the map,
&c., and
allow in-
spection.
clerks, parish clerks, clerks of the union, and schoolmasters
shall receive the said copies of the said map and plan respec-
tively, and shall keep the same, and shall allow all persons
interested to inspect the same, and take copies or extracts of
and from the same, in the like manner, and upon the like
terms, and under the like penalty for default, as is provided
in the case of maps and plans deposited under an Act passed
in the first year of the reign of Her Majesty, intituled *An Act* 7 Will. 4 &
1 Vict.
c. 83.
to compel Clerks of the Peace for Counties, and other Persons,
to take the Custody of such Documents as shall be directed to
be deposited with them under the Standing Orders of either
House of Parliament.

There are no provisions corresponding to these last three sections in
the "mine" sections of the Railways Clauses Act, 1845.

Sect 22. **22.** Except where otherwise provided for by agreement between the undertakers and other parties, if the owner, lessee, or occupier of any mines or minerals lying under the reservoirs or buildings belonging to the undertakers, or under any of their pipes or works which shall be under ground, and shall be described in the map or plan which shall be so kept and deposited as hereinbefore mentioned, or within the prescribed distance, if any, and if no distance be prescribed within forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give the undertakers notice in writing of his intention so to do thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the undertakers to cause such mines to be inspected by any person appointed by them for the purpose, and if it appear to the undertakers that the working of such mines or minerals is likely to damage the said works, and if they be willing to make compensation for such mines to such owner, lessee, or occupier thereof, then he shall not work the same; and if the undertakers and such owner do not agree as to the amount of such compensation the same shall be settled as in other cases of disputed compensation.

Mines lying near the works not to be worked until owners give notice to undertakers.

This section is practically the same as section 78 of the Railways Clauses Act, 1845. See the cases collected in the notes thereto, *ante*, p. 361. It differs, however, in this, that as regards pipes and other works which are under ground, the owners are not bound to give notice, and will not be liable for any injury caused to them by the usual working of the mine unless the undertakers have deposited the plans of these underground works as provided by sections 19 and 20. *South Staffordshire Waterworks v. Mason*, 56 L. J. Q. B. 255.

23. If before the expiration of such thirty days the undertakers do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines, and to drain the same, by means of engines or otherwise, as if this Act and the special Act had not been passed, so that no wilful damage be done to the said works, and so that the said mines be not worked in an unusual manner; and if any damage or

If undertakers do not state their willingness to treat for compensation, owner may work the mines.

obstruction be occasioned to the works of the undertakers by Sect. 23. the working of such mines in an unusual manner the same Owners to shall be forthwith repaired or removed (as the case may make good require), and such damage made good, by the owner, lessee, damage or occupier of such mines or minerals, and at his own occasioned by work- expense, and if such repair or removal be not forthwith done, ing the mines in an unusual manner. or if the undertakers shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the undertakers to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby by action in any of the Superior Courts.

This section is in effect the same as section 79 of the Railways Clauses Act, 1845, *ante*, p. 363. See notes thereto.

24. If the working of any such mines under the said Mining works of the undertakers or within the above-mentioned communi- distance therefrom be prevented as aforesaid by reason of cations. apprehended injury to such works, it shall be lawful for the respective owners, lessees, and occupiers of such mines to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata the working whereof shall be so prevented as may be requisite to enable them to ventilate, drain, and work any mines or minerals on each or either side thereof, but no such airway, headway, gateway, or water level shall be of greater dimensions or sections than the prescribed dimensions or sections, and where no dimensions are prescribed eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the said works so as to injure the same.

This section is practically identical with section 80 of the Railways Clauses Act, 1845, *ante*, p. 367. See notes thereto.

25. Except where otherwise provided for by agreement Company the undertakers shall from time to time pay to the owner, lessee, or occupier of any mines of coal, ironstone, and other compensa- minerals extending so as to lie on both sides of any reservoirs, tion to buildings, pipes, conduits, or other works, all such additional owner, lessee, or occupier expenses and losses as shall be incurred by such owner, lessee, of mines for ex-

Sect. 25. or occupier by reason of the severance of the lands over such mines or minerals by such reservoirs or other works, or of the continuous working of such mines or minerals being interrupted as aforesaid, or by reason of the same being worked under the restrictions contained in this or the special Act ; and for any mines or minerals not purchased by the undertakers which cannot be obtained by reason of making and maintaining the said works, or by reason of such apprehended injury from the working thereof as aforesaid ; and if any dispute or question shall arise between the undertakers and such owner, lessee, or occupier as aforesaid touching the price of such minerals, (a) the same shall be settled by arbitration in such manner as is provided by the Lands Clauses Consolidation Act if the undertaking shall be situate in *England* or *Ireland*, and by the Lands Clauses Consolidation (*Scotland*) Act if the undertaking shall be situate in *Scotland*.

penses incurred by reason of mines being worked.

Disputes to be settled by arbitration.

(a) Some of the later editions of the statutes print this word "materials."

"By reason of such apprehended injury."—This section is similar to section 81 of the Railways Clauses Act, 1845, but differs from it in two respects. It differs:—(1) That section 25 includes not only "minerals which cannot be obtained by reason of making and maintaining the works," but also those which cannot be obtained "by reason of apprehended injury from the working thereof." And see section 27, *post*. (2) By this section the compensation is to be settled in the manner provided by the Lands Clauses Act, while in section 81 it is to be settled by arbitration in the manner provided by the Railways Clauses Acts. As to what the mine owner can recover, see the notes to section 81, *ante*, p. 368.

"Such apprehended injury" is injury apprehended to the works of the undertakers, apprehended being used in the sense not merely of being alarmed, but anticipated, so that the undertakers have in consequence stopped the works under section 22. *Holliday v. Mayor of Wakefield* [1891], A. C. 81. When that case was before the Court of Appeal, 20 Q. B. D. 699, FRY, L.J., analysed this section (p. 717), which analysis was approved by the House of Lords. He pointed out that "there is one set of persons who are to pay, namely, the undertakers, and one payee, the owner, lessee, or occupier of mines extending so as to lie upon both sides of any reservoir, buildings, pipes, conduits, or other works. There are five matters in respect of which payments are to be made : first, the severance of lands over the mines—that is, of surface lands ; secondly, the interruption of the continuous working of the mine—that is, the interruption which arises from the taking of a portion of the minerals which but for that the owner would have worked ; thirdly, the restrictions on working, such as those in section 23 on working in anything but the usual manner ; fourthly, and here there is no new sentence—the value of mines and minerals not

purchased by the undertakers, but which cannot be got by reason of the works ; and, fifthly, the apprehended injury from the working as aforesaid—that is, the injury referred to in sections 22 and 24 as apprehended by the undertakers. It seems to me to follow that an injury which a mine owner apprehends, and which the undertakers do not, is nowhere provided for.” It follows, therefore, that the mine owner has no title to claim or recover compensation for the prospective prevention of the working of part of the mineral. See note to section 27, *post*.

Sect. 25.

26. For better ascertaining whether any such mines are being worked or have been worked so as to damage the said works it shall be lawful for the undertakers, after giving twenty-four hours’ notice in writing, to enter upon any lands through or near which the said works are situate, and wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith, and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the said works to the parts of such mines which are being worked or about to be worked.

Power to company to enter and inspect the working of mines, after giving notice of the same.

This section corresponds with section 83 of the Railways Clauses Act, *ante*, p. 369.

27. Nothing in this or the special Act shall prevent the undertakers from being liable to any action or other legal proceeding to which they would have been liable for any damage or injury done or occasioned to any mines by means or in consequence of the waterworks, in case the same had not been constructed or maintained by virtue of this Act or the special Act.

Nothing to prevent undertakers from being liable to actions for injury done to mines.

There is no section similar to this in the Railways Clauses Act ; it was obviously intended by the legislature to afford the mineowner protection against a reservoir or other waterwork—a protection not required in the case of a railway line. To do this it has departed from two principles which have been laid down in respect of compensation with reference to public works of a different nature, such as railways. These principles are—first, that the works when so established should not be subject to be impeached in a court of law for any damage or annoyance they might cause by reason of their ordinary use ; and, secondly, that any person whose land would be injuriously affected by the construction of the works should, in lieu of his right of action, be entitled to com-

Sect. 27. pension, a compensation which must, except where otherwise specially provided, be assessed once and for ever, and not subject to increase or diminution after that one assessment. Under this section compensation in the form of damages may still be claimed against a waterworks company, notwithstanding that they were constructed and maintained by virtue of an Act of Parliament, and compensation as such may be made from time to time and not be assessed once and for all. Per HALSBURY, L.C., in *Holliday v. Mayor of Wakefield* (1891), A. C. 81, pp. 89 and 90. In that case Lord WATSON stated his opinion as regards the effect of this section. He did not think that section 27 was meant to supersede the other clauses of the Act in cases where a full remedy is provided by these clauses, but that it was intended, and was sufficient, to cover every case of injury to mineral workings in which the mineowner would otherwise have been deprived of a legal remedy. There is no cause of action under this section until there is actual injury, and "injury is done to the mine by the reservoir whenever, in due course of working, the minerals, or part of them, become either unworkable to profit, or altogether unworkable, by reason of the flooding which must accompany the working." Whenever that state of matters occurs, the mineowner may bring his action for removal of the nuisance, with the alternative of pecuniary damages, if the undertakers prefer not to remove it. S. C., p. 101.

By the Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), ss. 3—10, provision is made by which persons interested may complain to two justices that a reservoir is in a dangerous state, whereupon an inquiry shall be made, and if it prove to be dangerous, they may make an immediate order for repair.

For a case where a mine was flooded owing to the overflow of a canal caused by *vis major*, and the mineowners were held not to be entitled to recover any damages or compensation, see *Thomas v. Birmingham Canal Company*, 49 L. J. Q. B. 851, following the principle in *Nichols v. Marsland*, L. R. 2 Ex. D. 1, and for a case of compensation given by the express provisions of the special Act, see *Countess of Rothes v. Kirkcaldy Waterwork Commissioners*, 7 A. C. 694.

28, 29.

Sections 28—34 deal with breaking up streets for the purpose of laying pipes. Section 28 gives undertakers power to do so upon making compensation. Section 29 provides that they shall not enter upon private land without consent of the owners except to replace a pipe already there. A water company in laying its pipes is not entitled under these sections to cut through the abutments of a bridge carrying a road over a railway, and to suspend water mains from the girders of the bridge. *Lord Provost of Glasgow v. Glasgow and South Western Railway Company*, H. L. W. N. (1895) 84.

* * * * *

And with respect to access to the special Act, be it enacted as follows :

Copies of
special
Act to be

90. The undertakers shall at all times after the expiration of six months after the passing of the special Act keep in their

principal office of business a copy of the special Act, printed **Sect. 28.**
 by the printers to Her Majesty, or some of them, and shall kept by
 also within the space of such six months deposit in the office under-
 of the clerk of the peace in *England* or *Ireland*, and of the takers
 sheriff clerk in *Scotland*, of the county in which the under- in their
 taking is situated, a copy of such special Act, so printed as office, and
 aforesaid ; and the said clerk of the peace and sheriff clerk deposited
 shall receive, and they and the undertakers respectively shall with the
 keep, the said copies of the special Act, and shall allow all clerks of
 persons interested therein to inspect the same, and make the peace,
 extracts or copies therefrom, in the like manner, and upon the &c., and be
 like terms, and under the like penalty for default, as is open to in-
 provided in the case of certain plans and sections by an Act spection.
 passed in the first year of the reign of Her Majesty, intituled
An Act to compel clerks of the peace for counties and other 7 Will. 4 &
persons to take the custody of such documents as shall be 1 Vict.
directed to be deposited with them under the standing orders of c. 83.
either House of Parliament.

(a) The Parliametary Deposit Act, 1837.

91. If the undertakers fail to keep or deposit any of the Penalty
 said copies of the special Act, as hereinbefore mentioned, they on under-
 shall forfeit twenty pounds for every such offence, and also takers
 five pounds for every day afterwards during which such copy failing to
 shall be not so kept or deposited. keep or
 deposit
 such
 copies.

* * * * *

THE HARBOURS, DOCKS, AND PIERS CLAUSES ACT, 1847.

10 & 11 VICT. CAP. 27.

An Act for consolidating in one Act certain provisions usually contained in Acts authorizing the making and improving of harbours, docks, and piers. [11th May, 1847.]

[Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorizing the construction or improving of harbours, docks, and piers, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves : Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That](a) this Act shall extend only to such harbours, docks, or piers as shall be authorized by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith ; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorized thereby, so far as they are applicable to such undertaking, and shall, with the clauses of every other Act incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Extent of Act.

(a) The preamble has been repealed by the Statute Law Revision Act, 1891, but is printed here as stating briefly and clearly the purpose of this Act. See note to preamble of the Lands Clauses Act, 1845, *ante*, p. 2. This Act extends to Scotland.

By the General Pier and Harbour Act, 1861 (24 & 25 Vict. c. 45), and the General Pier and Harbour Act, 1861, Amendment Act, 1862 (25 & 26 Vict. c. 19), the Board of Trade may grant provisional orders enabling undertakers to make and construct piers and harbours. Such provisional orders shall be deemed to incorporate this Act, and may in-

corporate the sections of the Lands Clauses Act, 1845, except those relating to the purchase of land otherwise than by agreement. The term special Act shall be deemed to apply to such provisional order. 24 & 25 Vict. c. 45, s. 15, and 25 & 26 Vict. c. 19, s. 19. Sect. 5.

The parts of the Act here set out are those dealing with the construction of the works in so far as it may be necessary to purchase or take land.

The Act may be incorporated in other Acts by reference to the headings to the groups of sections in the same way as the Lands Clauses Act, 1845, s. 5, and see note, *ante*, p. 10.

And with respect to the construction of the harbour, dock, or pier, be it enacted as follows :-(a)

6. Where by the special Act the undertakers shall be empowered for the purpose of constructing the harbour, dock, or pier, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject, if the harbour, dock, or pier be situate in *England* or *Ireland*, to the provisions and restrictions contained in this Act and in the Lands Clauses Consolidation Act, 1845, and if the harbour, dock, or pier be situated in *Scotland* to the provisions and restrictions contained in this and the Lands Clauses Consolidation (*Scotland*) Act, 1845; and the undertakers shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of this or the special Act, or injuriously affected by the construction of the works thereby authorised, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties by reason of the exercise as regards such lands of the powers vested in the undertakers by this or the special Act, or any Act incorporated therewith, and, except where otherwise provided by this or the special Act, the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands Clauses Consolidation Acts for determining questions of compensation with regard to lands purchased or taken under the provisions thereof, and all the provisions of the last-mentioned Acts shall be applicable to determining the amount of any such compensation, and to enforcing the payment or other satisfaction thereof.

(a) Under this heading are sections 6—13

THE HARBOURS, DOCKS, AND PIERS CLAUSES ACT, 1847.

10 & 11 VICT. CAP. 27.

An Act for consolidating in one Act certain provisions usually contained in Acts authorizing the making and improving of harbours, docks, and piers. [11th May, 1847.]

[Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorizing the construction or improving of harbours, docks, and piers, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That](a) this Act shall extend only to such harbours, docks, or piers as shall be authorized by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorized thereby, so far as they are applicable to such undertaking, and shall, with the clauses of every other Act incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Extent of Act.

(a) The preamble has been repealed by the Statute Law Revision Act, 1891, but is printed here as stating briefly and clearly the purpose of this Act. See note to preamble of the Lands Clauses Act, 1845, *ante*, p. 2. This Act extends to Scotland.

By the General Pier and Harbour Act, 1861 (24 & 25 Vict. c. 45), and the General Pier and Harbour Act, 1861, Amendment Act, 1862 (25 & 26 Vict. c. 19), the Board of Trade may grant provisional orders enabling undertakers to make and construct piers and harbours. Such provisional orders shall be deemed to incorporate this Act, and may in-

corporate the sections of the Lands Clauses Act, 1845, except those relating to the purchase of land otherwise than by agreement. The term special Act shall be deemed to apply to such provisional order. 24 & 25 Vict. c. 45, s. 15, and 25 & 26 Vict. c. 19, s. 19. Sect. 5.

The parts of the Act here set out are those dealing with the construction of the works in so far as it may be necessary to purchase or take land.

The Act may be incorporated in other Acts by reference to the headings to the groups of sections in the same way as the Lands Clauses Act, 1845, s. 5, and see note, *ante*, p. 10.

And with respect to the construction of the harbour, dock, or pier, be it enacted as follows :-(a)

6. Where by the special Act the undertakers shall be empowered for the purpose of constructing the harbour, dock, or pier, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject, if the harbour, dock, or pier be situate in *England* or *Ireland*, to the provisions and restrictions contained in this Act and in the Lands Clauses Consolidation Act, 1845, and if the harbour, dock, or pier be situated in *Scotland* to the provisions and restrictions contained in this and the Lands Clauses Consolidation (*Scotland*) Act, 1845; and the undertakers shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of this or the special Act, or injuriously affected by the construction of the works thereby authorised, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties by reason of the exercise as regards such lands of the powers vested in the undertakers by this or the special Act, or any Act incorporated therewith, and, except where otherwise provided by this or the special Act, the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands Clauses Consolidation Acts for determining questions of compensation with regard to lands purchased or taken under the provisions thereof, and all the provisions of the last-mentioned Acts shall be applicable to determining the amount of any such compensation, and to enforcing the payment or other satisfaction thereof.

(a) Under this heading are sections 6—13

Sect. 6. — “*The Special Act*” in this Act shall be construed to mean any Act which shall hereafter be passed authorising the construction or improving of any harbour, dock, or pier, and with which this Act shall be incorporated. Section 2.

“*The Undertakers*” shall mean the persons by the special Act authorised to construct the harbour, dock, or pier, or otherwise carry into effect the purposes of the special Act with reference thereto. Section 2.

“*The Harbour Dock or Pier*” shall mean the harbour, dock, or pier, and the works connected therewith by the special Act authorised to be constructed. Section 2. These words will include the quays, wharfs, and warehouses which are constructed under the powers of the special Act. *London Association of Shipowners v. London and India Docks Committee* (1892), 3 Ch. 242, p. 249.

“*The Lands*” shall mean the lands which shall by the special Act be authorised to be taken and used for the purposes thereof (section 2), and “shall include messuages, lands, tenements, and hereditaments, or heritages of any tenure” (section 3), and see note “*Lands*” to section 3 of the *Lands Clauses Act*, 1845, *ante*, p. 7.

Full Compensation.—This section is similar in effect to section 6 of the *Railways Clauses Act*, 1845. See the notes thereto, *ante*, p. 307.

The principles of compensation will be found in the notes to section 63 of the *Lands Clauses Act*, 1845, in respect of lands taken, *ante*, p. 110, and to section 68 in respect of lands injuriously affected, *ante*, p. 129.

If power is given to a corporation to do work on a river so as to insure a passage for ships, upon compensating the owners of the soil for injury done by such works, such power does not thereby confer the conservancy of the river on the corporation and prevent a riparian owner erecting a pier. *Corporation of Exeter v. Earl of Devon*, 10 Eq. 232.

As to blocking up a public right of way to the seashore by erection of a pier, see *Corporation of Yarmouth v. Simmons*, 10 Ch. D. 518.

Where under an old statute power was given to certain persons to render a river navigable and to remove impediments, and to make use of such lands as might be necessary for the purpose, doing as little damage as possible, and making compensation, and the statute appointed a special tribunal to settle the compensation, it was held where a person's land was damaged by the exercise of the powers, and the special tribunal had ceased to exist, that he might recover the damages by action. *Bentley v. Manchester, Sheffield, and Lincolnshire Railway Company* (1891), 3 Ch. 222.

Errors and omissions in plans, &c., may be corrected by justices, &c., who shall certify the same.

7. If any omission, mis-statement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands described on the plans or books of reference relating to the harbour, dock, or pier deposited in compliance with the Standing Orders of either House of Parliament, or in the schedule to the special Act, the undertakers, after giving ten days' notice to the owners, lessees, and occupiers of the lands affected by such proposed cor-

rection, may apply, in *England* or *Ireland*, to two justices, **Sect. 7.** and in *Scotland* to the sheriff, for the correction thereof; and if it appear to such justices or sheriff that such omission, mis-statement, or wrong description arose from mistake, they shall certify the same accordingly, and they shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate shall, along with the other documents to which it relates, be deposited in *England* or *Ireland* with the clerk of the peace of the several counties in which the lands affected by such alteration are situate, and in *Scotland* with the sheriff clerk of such counties and with the schoolmasters of the several parishes in which such lands are situate, and with the town clerk if such lands be situate in a Royal burgh; and thereupon such plan, book of reference, or schedule shall be deemed to be corrected according to such certificate; and the undertakers may make the works in accordance with such certificate, as if such omission, mis-statement, or wrong description had not been made.

Certifi-
cate, &c.,
to be de-
posited.

Compare the similar proviso in section 7 of the Railways Clauses Act, 1845, *ante*, p. 309, and as to the purchase of interests in land which have by mistake been omitted to be purchased before possession taken. See section 124 of the Lands Clauses Act, 1845, *ante*, p. 272.

8. The undertakers shall not commence the execution of Works not the harbour, dock, or pier unless they shall have previously to be pro- deposited with the said clerks of the peace in *England* and ceeded with until *Ireland*, and with the sheriff clerk in *Scotland*, of every plans of all altera- county in which the harbour, dock, or pier is situate, a plan tions authorized by Parlia- and section of all such alterations from the original plan and ment have been de- section as shall have been approved of by Parliament, on the posited. same scale and containing the same particulars as the original plan and section, and shall also have deposited with the parish clerks of the several parishes in *England*, and the clerks of the unions of the parishes in *Ireland*, and the schoolmasters of the several parishes and the town clerk of any Royal burgh in *Scotland* in which such alterations shall have been authorised to be made, copies or extracts of or

Sect. 8. from such plans and sections as shall relate to such parishes and Royal burghs respectively.

Clerks of the peace, &c., to receive plans of alterations, and allow inspection.

9. The said clerks of the peace, sheriff clerks, parish clerks, clerks of unions, schoolmasters, and town clerks shall receive the said plans and sections of alterations, and copies and extracts thereof respectively, and shall retain the same as well as the said original plans and sections, and shall permit all persons interested to inspect any of the documents aforesaid, and to make copies and extracts of and from the same, in the like manner and upon the like terms and under the like penalty for default, as is provided in the case of the original plans and sections by an Act passed in the first year of the reign of Her present Majesty, intituled *An Act to compel Clerks of the Peace for Counties and othor Persons to take the Custody of such Documents as shall be directed to be Deposited with them under the Standing Orders of either House of Parliament.*(a)

(a) The Parliamentary Documents Deposit Act, 1837 (7 Will. 4 and 1 Vict. c. 83).

Copies of plans, &c., to be evidence.

10. True copies of the said plans and books of reference, or of any alteration or correction thereof, or extract therefrom, certified by any such clerk of the peace or sheriff clerk which certificate such clerk shall give to all parties interested when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

No deviation beyond the limits defined upon plans.

11. The undertakers in making the harbour, dock, or pier shall not deviate from the line of the works laid down in the said plans more than the prescribed number of yards, and where no number of yards is prescribed not more than ten yards, nor in any case to any greater extent than the line of lateral deviation described in the said plans with respect to such harbour, dock, or pier, nor take or use for the purpose of such deviation the lands of any person not mentioned in the books of reference, without his previous consent in writing, unless the name of such person have been omitted by mistake,

and the fact that such omission proceeded from mistake have Sect. 11. been certified in manner hereinbefore provided.

This section is similar to section 11 of the Waterworks Clauses Act, 1847. See note thereto, *ante*, p. 387.

12. The undertakers shall not construct the harbour, dock, or pier, or any part thereof, or any works connected therewith on any part of the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, where and so far up the same as the tide flows and reflows, without the previous consent of Her Majesty, her heirs and successors, to be signified in writing under the hands of two of the Commissioners of Her Majesty's Woods, Forests, Land Revenues, Works, and Buildings, and of the Lords of the Admiralty, (a) to be signified in writing under the hand of the Secretary of the Admiralty, and then only according to such plan and under such restrictions and regulations as the said Commissioners of Her Majesty's Woods, Forests, Land Revenues, Works, and Buildings, and the said Lords of the Admiralty (a) approve of, such approval being signified as last aforesaid; and where any such work shall have been constructed with such consent as aforesaid, the undertakers shall not at any time alter or extend the same, without obtaining, previously to making any such alteration or extension, the like consents or approvals; and if any such work shall be commenced or completed without such consent and approval, the said Commissioners of Her Majesty's Woods, Forests, Land Revenues, Works, and Buildings, or the said Lords of the Admiralty, (a) may abate and remove the same, and restore the site thereof to its former condition, at the cost of the undertakers, and the amount of such costs shall be a debt due to the Crown and recoverable against the undertakers accordingly: Provided always, that if the conservancy of the navigable river shall legally belong to any person the like consent and approval of such person shall also be necessary, in addition to the consents and approvals hereinbefore required; and if the right of property of or in the

Works on the shore of the sea, &c., not to be constructed without the authority of the Commissioners of Woods, &c., and of the Admiralty.

Sect. 12. shore shall legally belong to any person, such right shall not be prejudiced except so far as power to purchase the same shall be given by the special Act.

(a) The powers and duties of the Admiralty under this section were transferred to the Board of Trade by the Harbours Transfer Act, 1862 (25 & 26 Vict. c. 69), s. 5.

Before alterations in plans are executed, to be approved of by the Admiralty and the Commissioners of Woods, &c.

13. If the undertakers propose to make any deviations from or alterations in the plans of their works, deposited as aforesaid, they shall, before adopting and carrying such deviations or alterations into execution, submit the plans thereof to the Lords of the Admiralty, (a) and also to the said Commissioners of Her Majesty's woods, forests, land revenues, works, and buildings; and no deviations from or alterations in the deposited plans shall be adopted by the undertakers unless approved by the Lords of the Admiralty or the said Commissioners respectively, signified in manner aforesaid, or, otherwise, as they shall think proper.

(a) Now the Board of Trade (25 & 26 Vict. c. 69, s. 5).

And with respect to the construction of works for the accommodation of the officers of customs, be it enacted as follows :

Under-takers to erect watch-house and boathouse for custom house officers, and keep the same in repair.

14. The undertakers, before they shall be entitled to take any rates in respect of the harbour, dock, or pier, if required so to do by the Commissioners of Her Majesty's customs, or at any time thereafter when so required, shall erect on a suitable spot within or near the harbour, dock, or pier, to be approved of by the said Commissioners, and always thereafter maintain a watch-house and boat-house for the use of the tide surveyors of the customs and their crew of such size and materials and in such manner as shall be approved of by the said Commissioners, and shall also, to the satisfaction of the said Commissioners, provide from time to time a sufficient number of huts for the use of the officers of revenue, with all fit and necessary weighing materials; and shall at all times

keep such watch-house, boat-house, huts, and weighing Sect. 14.
materials in good and sufficient repair.

* * * * *

And with respect to the construction of warehouses, wharfs, and other conveniences, be it enacted as follows :

20. The undertakers, in addition to the lands authorised to be compulsorily taken by them under the powers of the special Act, may contract with any party willing to sell the same for the purchase of any lands adjoining or near to the undertaking for extraordinary purposes ; (that is to say,) Power to purchase additional land required for extraordinary purposes.

For making and providing additional yards, wharfs, and places for receiving, depositing, and loading or unloading goods, and for the erection of weighing machines, toll houses, offices, warehouses, sheds, and other buildings and conveniences :

For making convenient roads to the harbour, dock, or pier, or any other purpose which may be requisite or convenient for the formation or use thereof.

21. The undertakers may, as well upon the said lands as upon any other lands acquired by them under the provisions of this and the special Act, construct such warehouses, store-houses, sheds, and other buildings and works as they may deem necessary for the accommodation of goods shipped or unshipped within the harbour, dock, or pier, and may erect or provide such cranes, weighing and other machines, conveniences, weights, and measures as they think necessary for loading, unloading, measuring, and weighing such goods. Power to construct warehouses and other works and provide cranes, &c.

In the case of *the London Association of Shipowners v. London and India Docks Joint Committee* (1892), 3 Ch. 242, it was held that these warehouses and wharfs were also part of the works authorised to be constructed by the special Act, and it was stated that where the legislature has expressly conferred upon a company powers, which the company as owner of property could have exercised without express statutory authority, that these powers must be treated as inserted in order to define, that is, limit the right conferred, and as implying a

Sect. 21. prohibition against the exercise of the more extensive rights which the company might have by virtue of its ownership of property. See per LINDLEY, L.J., p. 251.

Compare this section with section 45 of the Railways Clauses Act, 1845, and see notes thereto, *ante*, p. 335.

* * * * *

And with respect to access to the special Act, be it enacted as follows :

Copies of special Act to be kept by the undertakers in their office and deposited with the clerks of the peace, &c., and to be open to inspection.

7 Will. 4
and 1 Vict.
c. 83.

97. The undertakers shall at all times, after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty or some of them, and shall also within the space of such six months deposit in the office of the clerk of the peace in *England or Ireland*, and of the sheriff clerk in *Scotland*, of the county in which the harbour, dock, or pier, or any part thereof, is situate, a copy of such special Act so printed as aforesaid ; and the said clerk of the peace and sheriff clerk shall receive, and they and the undertakers respectively shall keep, the said copies of the special Act, and shall allow all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner and upon the like terms and under the like penalty for default as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of Her present Majesty, intituled *An Act to compel clerks of the peace for counties, and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament.*(a)

(a) The Parliamentary Documents Deposit Act, 1837.

Penalty on undertakers failing to keep or deposit such copies.

98. If the undertakers fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Similar provisions as to access will be found in the other Clauses Consolidation Acts.

THE TOWNS IMPROVEMENT CLAUSES ACT, 1847.

10 & 11 VICT. c. 34.

An Act for consolidating in one Act certain provisions usually contained in Acts for paving, draining, cleansing, lighting, and improving Towns. [21st June, 1847.]

* * * * *

This Act may be incorporated in special Acts in the same manner as in the other consolidating Acts. See section 5 of the Lands Clauses Act, 1845, and notes thereto, *ante*, p. 10.

Most of the powers given by special Acts incorporating this Act are given to urban sanitary authorities—now urban district councils—by the Public Health Act, 1875, *post*, and by section 160 thereof certain of the sections of this Act are incorporated therewith. The sections dealing with compensation are sections 19—21.

And with respect to taking lands and the compensation to be made by the commissioners for damage done by them in execution of the powers of this and the special Act, be it enacted as follows :

19. Where by this or the special Act the commissioners shall be empowered to take or use for the purposes thereof any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the powers so given, be subject to the provisions and restrictions contained in this Act and in the Lands Clauses Consolidation Act, 1845 ; and the commissioners shall make to the owners and occupiers of and all other parties interested in any such lands taken or used for the purposes of this or the special Act, full compensation for the value of the lands so taken or used and for all damage sustained by such owners, occupiers, and other parties by reason of the exercise, as regards such lands, of the powers vested in the commissioners by this or the special Act or any Act incorporated therewith ; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner pro-

Sect. 19.

Taking of
lands for
purposes
of special
Act to be
subject to
Lands
Clauses
Acts.
8 & 9 Vict.
c. 18.

Sect. 19. vided by the said Lands Clauses Consolidation Act for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the last-mentioned Act shall be applicable to determine the amount of any such compensation and to enforce the payment or other satisfaction thereof.

The principles of compensation will be found in the notes to section 63 of the Lands Clauses Act, 1845, for land taken (*ante* p. 110), and to section 68 in respect of lands injuriously affected (*ante*, p. 129).

"The Special Act."—This expression in this Act means "any Act which shall be hereafter passed for the improvement or regulation of any town or district or of any class of towns or districts defined or comprised therein, and with which this Act shall be incorporated." Section 2.

"The Commissioners" mean "the commissioners, trustees, or other persons or body corporate intrusted by the special Act with powers for executing the purposes thereof." Section 2. The definition of promoters of the undertaking in section 2 of the Lands Clauses Act, 1845, *ante*, p. 4, includes commissioners.

"Lands."—This word "shall include messuages, lands, tenements, and hereditaments of any tenure (section 3), and see the same definition in section 3 of the Lands Clauses Act, 1845, *ante*, p. 5, and the note thereto.

Errors and omissions in schedule to special Act may be corrected by justices, who shall certify the same.

20. If any omission, mis-statement, or wrong description shall have been made of any lands, or of the owner, lessees, or occupiers of any lands mentioned in any schedule to the special Act, the commissioners, after giving ten days' notice to the owners, lessees, and occupiers of the lands affected by such proposed correction, may apply to two justices for the correction thereof, and if it appear to such justices that such omission, mis-statement, or wrong description arose from mistake, they shall certify the same accordingly, and they shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate, with the other documents to which it relates, shall be deposited with the clerk of the peace of the county in which the lands affected thereby are situated, and such certificate shall be kept by such clerk of the peace with the other documents to which it relates, and thereupon such

Certificate to be deposited.

schedule shall be deemed to be corrected according to such certificate; and the commissioners may take any lands in accordance with such certificate as if such omission, misstatement, or wrong description had not been made. Sect. 20.

See section 7 of the Railways Clauses Act, 1845, which is similar in effect, and see the notes thereto, *ante*, p. 309.

21. The commissioners shall make good all damage to any buildings or land by reason of altering the level of any street, or otherwise carrying into execution any of the powers of this or the special Act, or of any Act incorporated therewith, and shall pay to the owners, lessees, and occupiers of any such buildings or lands respectively such amount of compensation for such injury as shall be agreed upon between such owners, lessees, and occupiers and the commissioners; and if such owners, lessees, and occupiers, and commissioners cannot agree as to the amount of such compensation, and the proportions thereof to be paid to such owners, lessees, and occupiers respectively, then the amount of such compensation, and also the proportions which the persons claiming the same are entitled to shall be determined in the manner provided by the Lands Clauses Consolidation Act, 1845, for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the last-mentioned Act shall be applicable to determine the amount of any such compensation and to enforce payment or other satisfaction thereof.

Commissioners to make compensation for damage done. If parties cannot agree as to compensation, the same to be determined in manner provided by 8 & 9 Vict. c. 18.

As to compensation in respect of altering the level of streets, see the notes to section 68 of the Lands Clauses Act, 1845, *ante*, p. 129, and more particularly the note "Access to premises," p. 137; and see also the notes to section 308 of the Public Health Act, 1875, *post*.

Commissioners are not authorised by this Act to commit a nuisance as by carrying sewerage into rivers. *Attorney-General v. Leeds Corporation*, 5 Ch. 583.

Sections 214 and 215 contain provisions as to access to the special Act practically identical with those in the other Clauses Consolidation Acts. See the Waterworks Clauses Act, 1847, sections 90, 91, *ante*, p. 398.

THE CEMETERIES CLAUSES ACT, 1847.

10 & 11 VICT. c. 65.

An Act for consolidating in one Act certain provisions usually contained in Acts authorising the making of Cemeteries.

[9th July, 1847.]

Extent of
Act.

Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorising the making of cemeteries, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for insuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall extend only to such cemeteries as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith, and all the clauses of this Act, save so far as they shall be expressly varied or excepted in any such Act, shall apply to the cemetery authorised thereby, so far as they are applicable to such cemetery, and shall, with the clauses of every other Act incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

This Act is intended to be incorporated in Acts obtained by companies or individuals for the purpose of providing a cemetery. It is incorporated in the Public Health (Interments) Act, 1879, an amending Act of the Public Health Act, 1875, which enables a local authority to acquire, construct, and maintain a cemetery either wholly or partly within or without their district. Sections 2 and 3.

The Burial Acts, 1852—1885, were intended to provide for the closing of overfilled churchyards and burial grounds, and to establish burial boards both in urban and rural districts, for the purpose of providing and managing new burial grounds. See Little's "Law of Burial," 2nd edition, p. 66. The powers of burial boards are now transferred by the Local Government Act, 1894 (56 & 57 Vict. c. 73), to parish

councils. Burial boards had no power to take land compulsorily, but by section 9 of the Local Government Act, 1894, parish councils may apply to the county council to take land for any of the purposes of that Act if they cannot acquire it by agreement on reasonable terms. See Local Government Act, 1894, *post*.

The taking of land under the Cemeteries Clauses Act or the Public Health (Interments) Act, 1879, is quite independent of the powers given by the Burial Acts.

* * * * *

And with respect to the making of the cemetery, be it enacted as follows : (a)

Sect. 6.

6. Where by the special Act the company shall be empowered, for the purpose of making the cemetery, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this Act and the Lands Clauses Consolidation Act, 1845, and shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the special Act, or injuriously affected by the construction of the works thereby authorised, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, or other parties, by reason of the exercise, as regards such lands, of the powers vested in the company by this or the special Act, or any Act incorporated therewith, and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the Lands Clauses Consolidation Act, 1845, for determining questions of compensation with regard to lands purchased or taken under the provisions thereof, and all the provisions of the last-mentioned Act shall be applicable to determine the amount of such compensation, and to enforce payment or other satisfaction thereof.

Construction of cemetery to be subject to the provisions of this and the Lands Clauses Consolidation Act, 1845.

(a) Sections 6—17.

As to the principles of compensation, see the notes to sections 63 and 68 of the Lands Clauses Act, 1845, *ante*, pp. 110, 129.

"The special Act" in this Act means "any Act which shall be hereafter passed authorising the making of a cemetery, and with which this Act shall be incorporated." Section 2.

Sect. 6. "*The Company*" means "the persons by the special Act authorised to construct the cemetery." Section 2.

"*The Lands*" means "the lands which shall by the special Act be authorised to be taken or used for the purposes thereof," and "shall include messuages, lands, and hereditaments of any tenure." Sections 2 and 3.

"*The Cemetery*" means "the cemetery or burial ground and the works connected therewith, by the special Act authorised to be constructed."

Errors and omissions in Act or schedule to be corrected by justices, who shall certify the same.

7. If any omission, mis-statement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands described in the special Act or the schedule thereto, the company, after giving ten days' notice to the owners of the lands affected by such proposed correction, may apply to two justices for the correction thereof, and if it appear to such justices that such omission, mis-statement, or wrong description arose from mistake, they shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate shall be deposited with the clerk of the peace of the county in which the lands affected thereby shall be situated, and thereupon the special Act or schedule shall be deemed to be corrected according to such certificate, and the company may take the lands according to such certificate, as if such omission, mis-statement, or wrong description had not been made.

Certificate to be deposited.

Compare the similar provision in section 7 of the Railways Clauses Act, 1845, and see the notes thereto, *ante*, p. 309.

Copies of plans, &c., to be evidence.

8. Copies of any alteration or correction of the special Act, or the schedule thereto, or of any extract therefrom, certified by any such clerk of the peace in whose custody such alteration or correction may be, which certificate such clerk of the peace shall give all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Company not to dispose of

9. The company shall not sell or dispose of any land which shall have been consecrated or used for the burial of

the dead, or make use of such land for any purpose except **Sect. 9.**
such as shall be authorised by this or the special Act, or any **any land**
Act incorporated therewith. **consecrated or**
used for
burials.

By section 40 of this Act, the company may sell part of the cemetery for vaults and burials.

By the Burial Act, 1857, s. 24, trustees of closed cemeteries vested in them under a local Act or otherwise, are empowered, with the sanction of the Secretary of State, to let or sell unconsecrated land and buildings which have not received interments when the cemetery is closed by Order in Council.

10. No part of the cemetery shall be constructed nearer **Cemetery**
to any dwelling-house than the prescribed distance, or if no **not to be**
distance be prescribed, two hundred yards, except with the **within a**
consent in writing of the owner, lessee, and occupier of such **certain**
house. **distance of**
houses.

"Dwelling-house" in this case means the house itself and does not include the curtilage, and the distance is to be measured from the walls of the dwelling-house. See *Wright v. Wallasey Local Board*, 18 Q. B. D. 783, a case under the Burial Act, 1855 (18 & 19 Vict. c. 128).

11. The company, upon any land which by the special Act **Company**
they are authorised to use for the purposes of the cemetery, **may build**
may build such chapels for the performance of the burial **chapels,**
service as they think fit, and may lay out and embellish the **&c.,**
grounds of the cemetery as they think fit.

12. The company, upon any land purchased by them under **Company**
this or the special Act, or any Act incorporated therewith, **may make**
may make any new roads to the cemetery, or widen or **or widen**
improve any existing roads thereto which they think fit. **roads to**
cemetery

13. Provided always, that the company shall not widen or **No road**
improve any existing road without the consent of the owner **to be**
thereof, if the road be private, or if the road be public, with- **widened**
out the consent of the persons in whom the management of **without**
the road is vested by law. **consent.**

14. The company and the owners or persons having the **Owners,**
management of any such road as aforesaid may enter into **&c., may**
such agreements as they think fit, for enabling the company **enter into**
to widen or improve any such road, and for maintaining the **agree-**
same. **ments for**
improving
roads
for that
purpose.

Sect. 15. **15.** Every part of the cemetery shall be inclosed by walls or other sufficient fences of the prescribed materials and dimensions, and if no materials or dimensions be prescribed by substantial walls or iron railings of the height of eight feet at least.

Cemetery, &c., to be kept in repair. **16.** The company shall keep the cemetery and the buildings and fences thereof in complete repair, and in good order and condition, out of the moneys to be received by them by virtue of this and the special Act.

Company to make compensation for damage done. **17.** Provided always, that in the exercise of the powers by this and the special Act granted to the company they shall do as little damage as can be, and shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers.

Compare this with the proviso in section 16 of the Railways Clauses Act, 1845, *ante*, p. 316, and see note thereto.

And with respect to preventing nuisance from the cemetery, be it enacted as follows :

Power to make sewers, drains, &c., in and about the cemetery. **18.** The company shall make all necessary and proper sewers and drains in and about the cemetery, for draining and keeping the same dry, and they may from time to time, as occasion requires, cause any such sewer or drain to open into any existing sewer, with the consent in writing of the persons having the management of such sewer, and with the consent in writing of the persons having the management of the street or road, and of the owners and occupiers of the lands through which such opening is made, doing as little damage as possible to the road or ground wherein such sewer or drain may be made, and restoring it to the same or as good condition as it was in before being disturbed.

Sections 66 and 67 contain provisions as to access to the special Act similar to those in the other Clauses Consolidation Acts. See the Waterworks Clauses Act, 1847, sections 90 and 91, *ante*, p. 398.

THE ABANDONMENT OF RAILWAYS ACT, 1850.

13 & 14 VICT. CAP. 83.

An Act to facilitate the abandonment of railways and the dissolution of railway companies in certain cases.

[14th August, 1850.]

* * * * *

17. [*And be it enacted, that*] (a) within one month after **Sect. 17.**
the day on which any such warrant as aforesaid is granted by the said Commissioners the railway company to which the same applies shall cause notice thereof to be inserted in the *London, Edinburgh, or Dublin Gazette*, according as the railway or part of railway mentioned therein is situate in *England, Scotland, or Ireland*, and once in each of three successive weeks in some newspaper published or circulating in each county in which any part of such abandoned railway is situate, and to be affixed for three successive *Sundays* on the principal outer door of the church or churches of every parish in which any such part of such railway is situate, and in *Ireland* such notice shall also be affixed to the Roman Catholic Chapel, and where there shall be no such church or chapel, on some public or conspicuous place of such parish; and every such notice shall require all persons having any claims or demands upon the said company for compensation or otherwise, by reason of the abandonment of railway authorised by such warrant, to transmit the statement of such claims or demands to the secretary of such company, at the office or usual place of business of the same company, within four months from the date of such warrant.

Abandonment of railway to be advertised, and demands on the company for compensation to be sent in.

(a) These words and the similar words in italics throughout this statute were repealed by the Statute Law Revision Act, 1891.

"Any such Warrant."—That is the warrant which the Railway Commissioners under section 15 are empowered to give authorising the

Sect. 17. abandonment of the railway. The powers and duties of the Railway Commissioners were transferred to the Board of Trade by 14 & 15 Vict. c. 64.

The power of the Board of Trade as to granting a warrant ordering a railway company to be wound up appears to be limited to railway companies incorporated prior to 1867. This Act applied only to railway companies authorised by Act of Parliament theretofore passed. The Railway Companies Act, 1867, provided that the Act of 1850 should "extend and apply to all companies authorised to make railways by Act of Parliament passed before the present session." The Abandonment of Railways Act, 1869 (32 & 33 Vict. c. 114), s. 4, allowed railway companies to be wound up under the Companies Acts, 1862—1867, after the warrant had been granted. The Companies Act, 1862, expressly excepts railway companies from its provisions (section 199). There would appear, therefore, to be no general statute dealing with the winding-up of railway companies incorporated since 1867, and the Board of Trade decided that they would not grant any warrant for the abandonment of a railway formed after 1867. See *In re Uxbridge and Rickmannsworth Railway Company*, 43 Ch. D. 536, p. 557, and see *In re Enniskillen and Bundoran Railway Company*, 25 L. R. Ir. 472.

For the cases as to compensation on the abandonment of a railway, see the notes to the Parliamentary Deposits Act, 1892, *post*.

"To the Secretary."—By section 9 of the Abandonment of Railways Act, 1869 (32 & 33 Vict. c. 114), it is provided that where there is no secretary of the company, or no office of the company the notice given in pursuance of this section may require claims and demands to be sent to such person or to such place as the Board of Trade direct.

Commissioners of Railways to certify the due publication of the notice of the warrant.

18. [*And be it enacted, that*] upon proof to the satisfaction of the said Commissioners that notice of such warrant has been duly published in manner hereinbefore required, the said Commissioners shall certify the same accordingly; and such certificate shall be received in all courts of justice or elsewhere as evidence that such notice was duly published as aforesaid.

After the granting of warrant the company to be released from liability to make the railway.

19. [*And be it enacted, that*] after the granting of any such warrant, and the publication of such notice thereof as aforesaid, the company shall (subject to the provisions herein-after contained) be released from all liability to make, maintain, or work the railway mentioned in such warrant, or the part thereof thereby authorised to be abandoned, or to purchase any of the lands required for the making thereof, or to complete the purchase of any such lands for the purchase of which notice may have been given, or any contract entered into, by

or on behalf of the company, or to complete any contract for Sect. 20,
 or concerning the making, maintaining, or working of the
 railway so to be abandoned, or any other contract relating to
 the railway or part of railway so authorised to be abandoned
 which by reason of such abandonment cannot be performed ;
 Provided always, that nothing in this Act contained shall
 extend to release the company from any liability to complete
 the purchase of any land for the purchase of which any con-
 tract may have been entered into by or on behalf of the com-
 pany, and which contract may have been in part performed,
 or by virtue or in pursuance of which a specified sum or price
 as the consideration for the purchase of the lands thereby
 agreed to be sold to or taken by the company shall have
 been fixed or ascertained previously to the passing of this
 Act, notwithstanding the time for the completion of the
 purchase named in such contract shall have been subse-
 quently extended by agreement or arrangement with the
 company.

20. Provided always, [*and be it enacted,*] that in every Compensa-
tion to be
made
where con-
tracts have
been
entered
into or
notice
given.
 case in which before the granting of any such warrant any
 notice hath been given or contract entered into by or on
 behalf of the company named therein for purchasing any
 lands which such company were by the Acts relating thereto
 empowered to purchase for the purpose of constructing the
 railway or portion of railway so authorised to be abandoned,
 and from which contract such company would be relieved
 under the provisions hereinbefore contained, or where any
 contract hath been entered into for or concerning the con-
 structing, maintaining, or working of the railway or part of
 railway so authorised to be abandoned, or any other contract
 relating thereto, which by reason of such abandonment can-
 not be performed, the company shall make to the owners or
 occupiers of and other parties interested in such lands, or
 being parties to such contracts as aforesaid, compensation, to
 be determined by arbitration as hereinafter mentioned, for all
 injury or damage, if any, sustained by such owners, occupiers,

Sect. 20. and other parties by reason of such purchase not being completed pursuant to such notice, or by reason of such contract not being performed.

The cases as to the persons entitled to claim compensation upon the abandonment of a railway have been decided upon the words of the special Act authorising the abandonment, and in reference to the distribution of the parliamentary deposit. They will be found in the notes to the Parliamentary Deposits Act, 1892 (55 & 56 Vict. c. 27), *post*.

Compensation to adjoining land-owners in lieu of accommodation works.

21. [*And be it enacted, that*] where any railway or part of a railway so authorised to be abandoned shall have been then made or commenced, such company shall make to the owners and occupiers of the lands adjoining the railway or part of a railway so commenced or made, and authorised to be abandoned, compensation, to be determined by arbitration as hereinafter mentioned, for all such injury or damage, if any, as shall be sustained by such owners or occupiers by reason of the omission to make gates, passages, drains, watercourses, bridges, and such other works, for the accommodation of lands adjoining the railway, as such company would have been required to make if such railway had not been allowed to be abandoned.

Where any road has been carried across an abandoned line of railway by means of a bridge or tunnel, the company shall pay a sum in discharge of their liability to keep the bridge, &c., in repair, except where the road is restored

22. [*And be it enacted, that*] where the line of any railway so authorised to be abandoned shall have been wholly or partially laid out, and any road shall have been carried across such line of railway by means of a bridge or tunnel over or under such railway, which bridge or tunnel the company to whom such railway belonged would, in case the same had not been abandoned, have been liable to keep in repair, then in every such case, except where such bridge or tunnel shall, with the permission of the said commissioners, be by such company removed, and such road restored to the like or an equally convenient and good state as the same was in before it was interfered with by the makers of such railway, to the satisfaction (in case of difference between such company and the owner or persons having the management of such road) of the Commissioners of Railways, such company shall pay to the owner of such road, if it be a private road, or to the

trustees surveyors of highways, or other persons having the management of such road, or if it be a turnpike or other public road, a sum of money, to be determined by arbitration as after mentioned, in lieu and discharge of their liability to keep such bridge or tunnel, and also the roadway over the same, in repair. Sect. 22.
to its
former
state.

23. [*And be it enacted, that*] every sum so to be paid as last aforesaid to such trustees, surveyors, or other persons as aforesaid shall be by them forthwith paid over to the treasurer of the county where the bridge or tunnel in respect of which such sum was paid is situate, and shall be by him invested in consolidated bank annuities or other public securities, and the dividends or income thereof shall, until Parliament shall otherwise provide, be applied in the maintenance of the bridge or tunnel in respect whereof the same was paid, in such manner as the justices in quarter sessions having jurisdiction where such bridge or tunnel is situate shall order. Compensation to trustees and overseers of public roads, how to be applied.

* * * * *

25. [*And be it enacted, that*] the amount of compensation so to be made in the several cases aforesaid shall be determined in case of difference by arbitration in the manner provided by the Railways Clauses Consolidation Act, 1845, or of the Railways Clauses Consolidation (Scotland) Act, 1845, as the case may require, and for that purpose all the clauses of the said Railways Clauses Consolidation Acts with respect to the settlement of disputes by arbitration shall be deemed to be incorporated with this Act: Provided always, that no such railway company shall be liable to make any compensation in respect of damage alleged to have been sustained by reason of the abandonment of the railway or part of the railway, or the non-completion of any contract of such company in any of the cases aforesaid, unless the claim for such compensation shall have been made within six months after the publication in the *Gazette* of the notice of the warrant for such abandonment as hereinbefore provided. Amount of compensation to be settled by arbitration, pursuant to 8 & 9 Vict. c. 20, and 8 & 9 Vict. c. 33.
Claims for compensation to be made within six months after publication of notice of warrant for abandonment.

Sect. 26. **26.** Provided also [*and be it enacted*], that the authority so as aforesaid given for abandoning the making of any such railway or part of a railway shall not prejudice or affect the right of the owner or occupier of any lands to receive from such company compensation for any damage that may have been occasioned by the entry of such company upon such lands, for the purpose of surveying and taking levels, and of probing or boring to ascertain the nature of the soil, or of setting out the line of the railway, pursuant to the provisions for that purpose in the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Act (Scotland), 1845, contained.

27. [*And be it enacted, that*] all the lands acquired by such company for the purposes of the railway or part of railway so authorised to be abandoned shall be sold by such company within the time limited or prescribed for that purpose in the warrant authorising the abandonment of such railway, and if no time be therein prescribed for that purpose, then within two years from the date of such warrant, in the manner prescribed by the said Lands Clauses Consolidation Acts with respect to the sale of superfluous lands; and for that purpose all the clauses of the said last-mentioned Acts with respect to the lands acquired by the promoters of the undertaking under the provisions of their special Act, but which are not required for the purposes thereof, shall be deemed to be incorporated with this Act: Provided always, that the offer to be made by the railway company pursuant to the said Acts to sell such lands to the person entitled to the lands from which the same were severed shall be made at a price or sum not greater than the price or sum at which such lands were purchased by such company.

* * * * *

34. [*And be it enacted, that*] in the event of the affairs of any such company being wound up under any such petition, the compensation hereinbefore directed to be given to the

In case of
petition
for wind-
ing up,

owners and occupiers of lands and others in respect of the damage sustained by them by reason of such abandonment in the cases hereinbefore mentioned, or by reason of the non-completion of any such contract as aforesaid, or otherwise, shall be deemed a demand claimed from, and when ascertained in the manner provided by this Act a debt due from, such company, and the party by whom such compensation is claimed shall be deemed a "creditor," in *England or Ireland*, within the provisions of the said Joint Stock Companies Winding-up Act, or, in *Scotland*, within the provisions of the said recited Act of the second and third years of the reign of Her present Majesty; and in case any lands purchased by such railway company shall be sold by the official manager under the said Act, they shall be sold in the manner and subject to the provisions contained in this Act.

Sect. 34.
land-owners are to be deemed creditors in respect of the compensation given by this Act.

THE INCLOSURE ACT, 1852.

15 & 16 VICT. CAP. 79.

An Act to amend and further extend the Acts for the inclosure, exchange, and improvement of land.

[30th June, 1852.]

* * * * *

Sect. 22.

Applica-
tion of
compensa-
tion for
common
rights paid
to a committee,
as compensation
for the extinction
of commonable
or other rights,
or for lands
being common
lands or in the
nature thereof,
the right to the
soil of which
may have
belonged to the
commoners,
and such committee
shall be of
opinion that the
provisions of such
Act for the
apportionment
thereof cannot
be satisfactorily
carried into
effect, such
committee may
make application
in writing to the
commissioners
to call a meeting
of the persons
interested in
such compensa-
tion money for
the appointment
of trustees of
such compensa-
tion money and
for the investment
thereof, and for
the application
of the interests
and annual pro-
duce thereof to
such purposes
for the benefit
of the persons
interested therein
as the commis-
sioners shall
approve; and
if the said
commissioners
shall think fit
to proceed with
such application,
they shall call
a meeting
accordingly,
and the decision
of the majority
in number and
the majority in
respect of interest
of the persons
present at such
meeting shall
bind the minority
and all absent
parties: Provided
always, that if
no instructions
shall be resolved
upon, or in case
the commissioners
shall deem such
instructions
unjust or unreason-
able, they may,
by an order under
their seal, give
such instructions
for the investment
of such compensa-
tion money and
for the

22. Where any money shall have been, or may hereafter be paid to a committee under "The Lands Clauses Consolidation Act, 1845," or under any railway or other special Act by which money may have been directed or authorised to be paid to a committee, as compensation for the extinction of commonable or other rights, or for lands being common lands or in the nature thereof, the right to the soil of which may have belonged to the commoners, and such committee shall be of opinion that the provisions of such Act for the apportionment thereof cannot be satisfactorily carried into effect, such committee may make application in writing to the commissioners to call a meeting of the persons interested in such compensation money for the appointment of trustees of such compensation money and for the investment thereof, and for the application of the interests and annual produce thereof to such purposes for the benefit of the persons interested therein as the commissioners shall approve; and if the said commissioners shall think fit to proceed with such application, they shall call a meeting accordingly, and the decision of the majority in number and the majority in respect of interest of the persons present at such meeting shall bind the minority and all absent parties: Provided always, that if no instructions shall be resolved upon, or in case the commissioners shall deem such instructions unjust or unreasonable, they may, by an order under their seal, give such instructions for the investment of such compensation money and for the

application of the income thereof as they shall think fit ; and Sect. 22. such order under the seal of the commissioners, or the order approving of such instructions as aforesaid, shall contain provisions for the appointment of new trustees from time to time ; and copies of such order shall be deposited and kept in like manner as copies of an award are by the firstly herein-before recited Act directed to be deposited and kept ; and the said committee shall be absolutely discharged from all liability in respect of such compensation money upon payment thereof to the said trustees, who shall, out of such money, in the first place pay and discharge all expenses which may be incurred by the said commissioners in respect of or in any way incident to such application and order, and apply or invest the surplus thereof in such manner as shall by such order be authorised or directed.

The provisions of the Lands Clauses Act, 1845, as to commons, will be found in sections 99—107, *ante*, p. 251, *et seq.* The committee of the commoners are, by section 104, empowered to apportion the compensation, but as this duty has not been satisfactorily or easily performed, various other methods of dealing with the money have been provided by the Inclosure Act, 1854, *post*, and the Commonable Rights Compensation Act, 1882, *post*.

THE CUSTOMS CONSOLIDATION ACT, 1853.

16 & 17 VICT. CAP. 107.

An Act to amend and consolidate the laws relating to the customs of the United Kingdom and of the Isle of Man, and certain laws relating to the trade and navigation and the British Possession. [20th August, 1853.]

* * * * *

The greater portion of this Act was repealed by the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36); but the clauses dealing with the acquisition and disposal of lands for the service of the Customs (sections 332—345) were left intact, with the exception of sections 334 and 342, which dealt with the application of moneys for the sale and purchase of lands, and for which, as regards lands taken for the customs, sections 275 and 276 of that Act were substituted, which sections are in effect still operative. See note to Customs Building Act, 1879, *post*.

By sections 332 and 333, the lands purchased or to be taken for the use of Her Majesty's Customs were vested in the Secretary of Customs and his successors, with power to sell and convey the same. By the Customs Building Act, 1879 (42 & 43 Vict. c. 79), *post*, these lands were vested in the Commissioners of Works. By section 5 thereof, the Commissioners are empowered to purchase land, and the clauses of the Lands Clauses Acts are incorporated, except those in respect of the purchase of land otherwise than by agreement, the special Act being the Customs Building Act, 1879, and the promoters of the undertaking being the Commissioners of Works.

By section 6, however, of that Act the Commissioners of Works are given the powers and provisions of sections 335—341 and 345 of the Customs Consolidation Act, 1853, which are here set out, and of sections 275 and 276 of the Customs Consolidation Act, 1876, which are also set out, *post*.

The Coast Guard Service Act, 1856 (19 & 20 Vict. c. 83), ss. 4 and 5, *post*, gives power to the Admiralty to take lands for coast-guard stations, and that Act incorporates sections 336—345 of the Customs Consolidation Act, 1853.

As to the acquisition and disposal of lands, &c., for the service of the Customs.

Treasury
may
authorize
persons to
mark out

335. The Commissioners of the Treasury may, from time to time, by any writing under their hands, authorise any person to survey and make out any lands, not exceeding one-

half acre at any one station, which may be wanted for the purpose of erecting watch-houses, dwelling-houses, and other buildings requisite for the security and protection of the revenues of customs and excise, with all necessary ways unto and from the same, such lands being situated within half a mile of the seashore or of the tideway of any navigable river, and may authorise any person, by warrant, to treat and agree with the owner or owners of or any person or persons interested in any such lands as aforesaid for such estate or interest therein, or for the absolute purchase thereof, or for the possession thereof for such term of years as the public service may require.

Sect. 335.
lands for
watch-
houses,
&c. ;
and to
treat with
owners.

336. When parties, being seised, possessed of, or entitled to any such lands, or any estate, or interest therein, labour under any disability to sell, release, or assign the same, or to contract for the grant of any lease of any such lands, either for any term of years or for such periods as the public service shall require, the seventh section of the Lands Clauses Consolidation Act, 1845 (England), and the seventh section of the Lands Clauses Consolidation Act, 1845 (Scotland), shall apply to the cases of the parties so disabled or incapacitated, in whatever part of the United Kingdom the said lands may be situate ; and the said sections are hereby respectively made a part of and incorporated with this Act, and shall be applicable to parties so seised or entitled as aforesaid in any part of the United Kingdom ; and for the purpose of this Act the expression “the promoters of the undertaking,” wherever used in the said clauses of the Lands Clauses Acts, shall mean the person authorised as aforesaid by the Commissioners of the Treasury.

Parties
seized or
entitled
to lands
under dis-
ability em-
powered to
sell or
convey to
Treasury
or
Customs.

337. In case any bodies or other persons authorised by the clauses of the Acts lastly hereinbefore mentioned to sell or demise lands so marked out as aforesaid, shall, for the space of fourteen days (next after notice in writing, subscribed by such person authorised as aforesaid shall have been given

Bodies or
persons
refusing to
treat, or to
accept
considera-
tion
offered,

Sect. 337. to the principal officer or officers of any such body, or to such other persons hereby authorised to contract on behalf of others or interested themselves as aforesaid, or left at his or their usual place of abode, if any such can, after diligent inquiry, be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, left with the occupier of such land, or if there be no such occupier, shall be affixed upon some conspicuous part of such lands) refuse to treat or agree, or by reason of absence shall be prevented from treating or agreeing with such person authorised as aforesaid, or shall refuse to accept such annual rent or sum as shall be offered for the hire thereof, either for a time certain or for such period as the public service may require, then and in such case, or in case of disagreement between such bodies or persons so authorised to sell, release, grant, or demise, and the person so authorised as aforesaid by the said Commissioners of the Treasury, and in case also it shall not be practicable to procure by voluntary bargain or sale any other land situate and required as aforesaid, then and in such case it shall be lawful for two or more justices to put the officers of customs in possession of such land, and for that purpose to issue a warrant under their hands and seals, requiring possession to be delivered to such of the said officers as shall be named therein ; and such person so authorised as aforesaid, may issue his warrant to the sheriff or sheriffs of the county, riding, stewartry, city, or place wherein such lands shall be situate to summon a jury, and every such sheriff, upon receipt of such warrant shall, in the manner required by law, summon a jury of twenty-four common jurymen to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one after the receipt of such warrant, and such place not being more than twenty miles distant from the lands in question, unless by consent, of the parties interested, and he shall forthwith give notice to the Commissioners of Customs of the time and place so appointed by him : Provided always, that nothing herein

justices
and others
may put
Her
Majesty's
officers
in possession.

Justices
and others
may have
a jury summoned.

shall be construed to extend to any garden or pleasure ground, or to any land immediately contiguous to and used as the curtilage or homestead of any dwelling house. Sect. 337.

As to the mode of proceeding on the inquiry by the jury or juries so summoned as aforesaid.

338. Where the lands the subject of inquiry shall be situate either in England or Ireland, the Lands Clauses Consolidation Act, 1845, from section forty to section sixty-eight inclusively, shall be incorporated with this Act ; and for the purpose of this Act the expression “ the promoters of the undertaking,” wherever used in the said Lands Clauses Consolidation Act, shall mean the person authorised as aforesaid by the Commissioners of the Treasury. Incorporation of Lands Clauses Consolidation Act (England and Ireland).

339. Where the lands the subject of inquiry shall be situate in Scotland, the Lands Clauses Consolidation Act, 1845 (Scotland), from thirty-eight to sixty-eight inclusively, shall be incorporated with this Act, and for the purpose of this Act, the expression “ The promoters of this undertaking,” wherever used in the Lands Clauses Consolidation Act, Scotland, shall mean the persons so authorised as aforesaid, by the Commissioners of the Treasury. Incorporation of Lands Clauses Consolidation Act (Scotland).

340. The jury impanelled as aforesaid shall ascertain the compensation to be paid for any such lands, and the proportion to be paid out of such compensation to any lessees or tenants at will, or otherwise, of such lands, and the proportion so to be paid shall be returned on the verdict. Compensation of lessees.

341. In all cases where lands shall have been taken under the provisions of this Act for a term of years, or for such period as the public service shall require, the Commissioners of the Treasury, or any other person so authorised as aforesaid, at any time before the possession of lands shall be delivered up to the owner thereof, or other person acting on his behalf, shall remove all such buildings or other Upon delivering up lands to the owners all erections for the public service to be removed, making

Sect. 341. erections which may have been erected thereon for the public service, and carry away the material thereof, making such compensation to the owner or owners of such lands or other person or persons, acting on his behalf, for the damage which may have been done thereto, or to the soil thereof, by the erection of any such buildings, or removing and carrying away the same, or otherwise, as the said Commissioners of the Treasury or other persons authorised as aforesaid shall think reasonable, and if such owner or owners, or other persons acting on his behalf, shall not be willing to accept the compensation so offered, the said Commissioners of the Treasury, or other person so authorised as aforesaid, may require two justices of the peace of the county, riding, stewartry, city, or place to ascertain the compensation which ought to be made for such damage, and such justices shall ascertain the same, and grant a certificate thereof, and the amount of compensation so ascertained, and certified shall forthwith be paid by warrant of the Commissioners of the Treasury to the person entitled thereto: Provided, that nothing herein shall be construed to extend to alter, prejudice or affect any agreement which has or shall be entered into by any such person authorised as aforesaid with any owner of such lands, or other person acting on his behalf, in relation to such building or erections.

compensation to owners.

In case of dispute compensation to be settled by two justices.

Act not to affect agreements between the Treasury and the owner.

As to the application of purchase moneys, &c., for lands purchased or taken from parties under disability, &c.

Money given for lands belonging to incapacitated persons, &c., to be paid to the proper officer of the Exchequer for their use;

342. In all cases where any money shall have been or shall be agreed, or shall have been or shall be found by the verdict of any jury to be paid for the use or possession of lands taken by virtue of this Act belonging to any person under any disability or incapacity, or not having the absolute interest therein, the same shall be paid by warrant of the Commissioners of the Treasury to the proper officer of the Court of Exchequer at Westminster, Edinburgh, or Dublin respectively for the time being for receiving the moneys belonging to the suitors of the said Court, for the use of such

person, and such officer, is hereby authorised and required to **Sect. 342.** receive and give a discharge for such money, and upon receipt thereof to sign a certificate to the barons of the said Courts of Exchequer respectively, under his hand, signifying that such money was received by him for the use of such person who shall be named in such certificate, and the said certificate shall be filed in the said Court of Exchequer at Westminster, Edinburgh, or Dublin, respectively, as the case may be, and a copy thereof, signed by such officer, shall be read and allowed as evidence for the purposes hereinafter mentioned, and such officer is hereby required, upon receipt of any such sum of money as aforesaid, to pay the same into the Bank of England, or Bank of Scotland, or Royal Bank of Scotland, or Bank of Ireland, as the case may require, and immediately upon the filing of such certificate, the said lands shall be vested in or to the use of Her Majesty, Her heirs and successors.

and upon his certificate of receipt, lands may be vested in Her Majesty.

Sections 342—344, are no longer applicable as regards land taken for customs, but their incorporation in the Coast Guard Service Act does not appear to have been repealed. For the provisions in place thereof in respect of land taken for customs, see the Customs Building Act, 1879, *post*, and the notes thereto.

By the Supreme Court of Judicature (Funds, &c.) Act, 1883 (46 & 47 Vict. c. 29), funds are now payable to the account or credit of the Paymaster-General for and on behalf of the Supreme Court of Judicature.

343. Upon the application by petition of any party making claim to the money so deposited, or any part thereof, or of the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the Barons of the Court of Exchequer at Westminster, Edinburgh, or Dublin may in a summary way, as to them shall seem fit, order such money to be invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective interests of the parties making claim to such moneys or lands or any part thereof, and may make such other order in the premises as the Court shall deem fit.

Barons of Exchequer upon application of parties interested may order disposal of money deposited.

Sect. 344.

On the death or removal of officers of Exchequer, stocks and securities shall vest in his successor.

344. Upon the death, removal, or resignation of any such officer of the said Courts of Exchequer, all stocks and securities vested in him by virtue of this Act shall vest in the succeeding officer of the Exchequer for the purpose hereinbefore mentioned, without any assignment or transfer; and all moneys paid in the said banks respectively in pursuance of this Act, or remaining in the hands of any such officer at his death, resignation, or removal, and not vested in the funds or placed out on securities as aforesaid, shall be paid over to the succeeding officer for the like purpose for the time being.

And as the costs of conveyance or leases of lands under this Act:

Certain sections of Lands Clauses Consolidation Act incorporated.

345. Sections eighty-one, eighty-two, and eighty-three of the Lands Clauses Consolidation Act, 1845, (a) shall be and are hereby incorporated with this Act, so far as the same shall relate to the conveyance or demise of lands in England and Ireland; and sections eighty, eighty-one, and eighty-two of the Lands Clauses Consolidation Act (Scotland), shall be and are hereby incorporated under this Act, so far as the same shall relate to conveyance or demise of lands in Scotland; the expression of "the promoters of the undertaking," wherever used in the said Acts respectively, to mean the persons so authorised as aforesaid by the Commissioners of the Treasury.

(a) See *ante*, pp. 116—119.

THE INCLOSURE ACT, 1854.

17 & 18 VICT. CAP. 97.

An Act to amend and extend the Acts for the inclosure, exchange, and improvement of land.

[10th August, 1854.]

15. Where any money shall have been or may hereafter be paid to a committee under "The Lands Clauses Consolidation Act, 1845," or under any railway or other special Act by which money may have been directed or authorised to be paid to a committee as compensation for the extinction of commonable or other rights, or for lands, being common lands or in the nature thereof, the right to the soil of which may have belonged to the commoners, and the majority of such committee shall be of opinion that the provisions of such Act for the apportionment thereof cannot be satisfactorily carried into effect, such majority may make application in writing to the commissioners to call a meeting of the persons interested in such compensation money, to determine whether or not such compensation money shall be apportioned under the provisions of this Act.

Sect. 15.
Applica-
tion of
compensa-
tion for
common
rights paid
under
8 & 9
Vict. c. 18.

See sections 99—107 of the Lands Clauses Act, 1845, *ante*, p. 251. Additional powers were given by the Inclosure Act, 1852, *ante*, p. 424, and another method of distribution and dealing with the compensation has been provided by the Commonable Rights (Compensation) Act, 1882, *post*.

16. If the majority in number and interest shall resolve that such compensation money shall be apportioned, the amount of such compensation money shall be forthwith paid into the Bank of *England*, to the credit of an account to be named by the Inclosure Commissioners for *England* and *Wales*; (a) and the said committee shall be absolutely discharged from all liability in respect of such compensation

Money to
be paid
into Bank
of Eng-
land.

Sect. 16. money, upon payment thereof into the Bank of *England* as hereinbefore directed.

(a) Now the Board of Agriculture (52 & 53 Vict. c. 30).

Interests
to be ascer-
tained by
commis-
sioners.

17. As soon as the said moneys shall have been paid into the bank as aforesaid, the said Inclosure Commissioners, (a) or any assistant commissioner appointed or to be appointed by them for that purpose, shall proceed to ascertain, determine, and award the names of the parties who were entitled to such estates, rights, and interests in the said common and commonable lands, and the amount or value of their respective shares, rights, and interests therein, and the proportionate amount of the price so to be paid as aforesaid for such estates, rights, and interests to which each party so entitled as aforesaid is entitled, in respect of his share, right, or interest as aforesaid; and the award of the commissioners under their common seal, or assistant commissioner in writing under his hand and seal, shall be binding on all parties claiming such estates, rights, and interests as aforesaid; and for the purpose of ascertaining the rights and interests of such parties as aforesaid it shall be lawful for the said Inclosure Commissioners (a) or assistant commissioner to call such meetings as they or he shall think fit of all persons having or claiming any such rights or interests in the said common and commonable lands as aforesaid, at such time and place as the said commissioners or assistant commissioner shall think fit, so as the same shall be appointed by a public notice thereof in writing to be affixed at least twelve days before such meeting on the principal outer door of the parish church in which such land or any part is situate; and to be inserted in one of the public newspapers published or generally circulated in the county in which such land is situate; and at such meeting the said commissioners or assistant commissioner do and shall proceed to examine into and ascertain all and every the claims which shall be made or put forward in respect of any such rights or interests as aforesaid, and the relative and proportionate value of the estates,

rights, and interests of any person or persons claiming to be Sect. 17.
entitled thereto, and for that purpose do and may employ any
valuer or surveyor, and call for and receive such records,
deeds, and writings, and such other proof or evidence, as the
said commissioners or assistant commissioner may think fit ;
and they and he are and is hereby authorised and required to
take the testimony of any witnesses upon oath (which oath
they and he are and is respectively hereby empowered to
administer), or to take the affirmation of such witnesses in
cases where affirmation is allowed by law instead of oath.

(a) Now the Board of Agriculture (52 & 53 Vict. c. 30).

18. All the costs and expenses of the said Inclosure Com- Costs of
commis-
sioners to
be paid out
of the
money
paid in,
and the
residue
divided
among the
parties in-
terested.
missioners(a) and assistant commissioner, and of any valuer
or surveyor employed by them or him under the provisions
hereinbefore contained, shall, in the first place, be paid out of
such compensation moneys, and the residue of the said
moneys shall be paid and divided between and amongst the
said several parties to be named in the said award, and in the
shares and proportions to be ascertained and set forth in such
award.

(a) The Board of Agriculture.

19. When it shall appear to the commissioners(a) or Where
parties en-
titled are
entitled for
limited in-
terests
only, the
shares, if
exceeding
20l., shall
be paid to
trustees.
assistant commissioner that any of the parties entitled to such
rights or interests are only entitled thereto for a limited
interest, then it shall be lawful for them or him, by their or
his award, to direct that the moneys to be paid in respect of
such right or interest, where the same shall exceed twenty
pounds, shall be paid to the trustees acting under the will,
conveyance, or settlement under which such person having
such limited interest shall be interested in such rights or
interests, and where there are no trustees then into the hands
of trustees to be appointed under the hands and seal of the
commissioners, to be held by them on trusts similar to the
uses or trusts to which such rights or interests had been
immediately before the payment of such moneys into the

Sect. 19. bank subject to, or as near thereto as the said commissioners or assistant commissioner can ascertain; and the receipts of any trustees to whom any such moneys shall be paid as aforesaid shall be good and sufficient discharges for the same: Provided always, that the payment of all such sums shall from time to time be subject to such rules and regulations, for the purpose of ensuring the payment thereof to the person or persons duly entitled to receive the same, as the said commissioners shall by any order direct.

(a) The Board of Agriculture.

As to sums payable in respect of lands not exceeding 20l.

20. In all cases where the sum payable by virtue of such award, in respect of any estate, right, or interest, shall not exceed twenty pounds, and the person entitled to such estate, right, or interest shall be under any disability, or incapacity, such sum shall and may be paid to the guardian, committee, or husband of such person; and where any such person shall have a limited interest only in such estate, right, or interest, the whole of such sum shall and may, nevertheless, be paid to the person having such limited interest, to his or her guardian, committee, or husband, as the case may be.

THE COAST-GUARD SERVICE ACT, 1856.

19 & 20 VICT. CAP. 83.

An Act to provide for the better defence of the coasts of the realm, and the more ready manning of the navy, and to transfer to the Admiralty the government of the coast-guard.
[29th July, 1856.]

Besides the powers given by this Act, section 7 of the Lands Clauses Act, 1860, *post*, enables the Secretary of State for War to use all or any of the powers and provisions of the Lands Clauses Acts for the purchase or acquisition of lands wanted for the service of the Admiralty or War Department or for the defence of the realm. The powers given to the Admiralty by this Act do not, however, appear to be affected.

* * * * *

4. All lands held for the purposes of the existing coast-guard service under the authority of any Act or otherwise, and all other property whatsoever held, possessed, or used for the like purposes, shall, from and after such day as shall be named by the Commissioners of the Treasury as aforesaid, become and be vested in and be the property of the Commissioners of the Admiralty, in trust for Her Majesty, Her heirs and successors, for the public service ; and the Commissioners of the Admiralty may from time to time sell, exchange, or otherwise dispose of to such persons as they shall think fit any lands which may become vested in them under the authority of this Act, or in the exercise of the powers thereby given, and the moneys payable on or by reason of such sales, exchange, or disposal shall be paid to Her Majesty's Paymaster-General for the time being (or to such other person as the said Paymaster-General shall appoint), and the receipt of such Paymaster-General (or other person) endorsed on the conveyance or assignment shall be an effectual discharge.

Lands.—It is provided that lands shall include all lands, tenements, and hereditaments, and every estate, right, title, and interest therein,

Sect. 4.
Lands held for existing coast-guard service to be vested in Admiralty.

Sect. 4. but the definition will now be that given in the Interpretation Act, 1889, which unless the contrary intention appears, is the meaning to be given to lands in every Act passed after the year 1850. By that Act it is provided that "the expression 'land' shall include messuages, tenements, and hereditaments, houses, and buildings of any tenure" See note "Lands" to section 3 of the Lands Clauses Act, 1845, *ante*, p. 7.

Power to
Admiralty
to acquire
lands for
coast-
guard
stations.

5. The Commissioners of the Admiralty may from time to time, by any writing under their hands, authorise any person to survey and mark out any lands not exceeding three acres, at or for any one coast-guard station which may be wanted for the purposes of the coast-guard service, with all necessary ways unto and from the same, and may authorise any person, by warrant, to treat and agree with the proper parties for the purchase of such lands, or the possession thereof; and the sections of the Act passed in the seventeenth year of the reign of Her present Majesty, chapter one hundred and seven, (a) numbered respectively from three hundred and thirty-six to three hundred and forty-five (each inclusive), and all sections of other Acts therein mentioned, shall be and are hereby incorporated with this Act; and whenever in any of the sections of any Act so hereby incorporated the expression "the Commissioners of the Treasury," or the expression "the Commissioners of Customs," shall occur, each of such expressions shall for the purposes of this Act be deemed and taken to mean the Commissioners of the Admiralty, and whenever in any of such sections the expression "the officers of customs" shall occur, such expression shall for the purposes of this Act be deemed and taken to mean officers of the coast-guard.

(a) That Act is the Customs Consolidation Act, 1853, *ante*, p. 426.

LANDS CLAUSES CONSOLIDATION ACTS
AMENDMENT ACT, 1860.

23 & 24 VICT. CAP. 106.

An Act to amend the Lands Clauses Consolidation Acts (1845) in regard to sales and compensation for land by way of a rentcharge, annual feu duty or ground annual, and to enable Her Majesty's principal Secretary of State for the War Department to avail himself of the powers and provisions contained in the same Acts.

[20th August, 1860.]

[Whereas it is expedient to extend the provisions of the Lands Clauses Consolidation Acts, 1845, in regard to sales of land, or compensation for damages, in consideration of an annual rentcharge, annual feu duty or ground annual, and to enable Her Majesty's principal Secretary of State for the War Department to avail himself of the powers and provisions contained in the same Act for the purchase of lands wanted for the service of the War Department or for the defence of the realm : Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :]

Repealed by the Statute Law Revision Act, 1892.

1. [So much of the tenth section of the Lands Clauses Consolidation Act, 1845, as provides that, save in the case of lands of which any person is seised in fee or entitled to dispose absolutely for their own benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum, is hereby repealed.]

Sect. 1.
Part of
section 10
of recited
Act
repealed.

Repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

Sect. 2.

Sections 10 and 11 of recited Act, as to power to sell, &c., lands for an annual rent-charge, and to recover, extended to all sales, &c., where parties are under disability.

Similar proviso with regard to lands sold under section 10 of 8 & 9 Vict. c. 19.

2. The power to sell and convey lands in consideration of an annual rentcharge provided by the tenth section of the said Act, (a) and the power to recover such rentcharge provided by the eleventh section (b) of the said Act, are hereby extended to all cases of sale and purchase or compensation under the said Act where the parties interested in such sale or entitled to such compensation are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act.

(a) *Ante*, p. 27.

(b) *Ante*, p. 28.

3. The power to sell and convey lands in consideration of an annual feu duty or ground annual, under the tenth section of the Lands Clauses Consolidation (*Scotland*) Act, 1845, and the power to recover such annual feu duty or ground annual, are hereby extended to all cases of sale or purchase or compensation under the said Act, where the parties interested in such sale are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act.

Amount of rent-charge to be settled in manner directed in the 9th section of recited Acts.

4. In every case of such sale or compensation by any parties other than parties seised in fee or entitled to dispose absolutely of the lands so sold or damaged, the amount of such rentcharge, annual feu duty or ground annual, hereinbefore mentioned, shall be settled in the manner directed in the ninth section of each of the said Acts respectively ; Provided, that the amount of such annual rentcharge, annual feu duty or ground annual, shall in no case be less than one-fourth part greater than the net annnal rent received by the parties beneficially interested in such lands upon an average of the last seven years ; and that a charge of five *per cent.* on the gross sum estimated or fixed as aforesaid, by way of compensation for any damage that may be done to the said

lands, shall, in all such cases, be added to and shall form a part of the said rentcharge, annual feu duty or ground annual ; and that no fine, foregift, grassum, premium, or other consideration in the nature thereof, shall be paid or taken in respect of the lands so sold or damaged, other than the annual rentcharge, annual feu duty or ground annual made payable for such lands : Provided also, that such rentcharge shall be and remain upon and for the same uses, trusts, and purposes as those upon which the rents and profits of the land so conveyed stood settled or assured at or immediately before the conveyance thereof, and shall be a first charge on the tolls and rates, if any, payable under the special Act. Sect. 4.

5. In case the promoters of the undertaking shall be empowered, by any Act or Acts relating thereto, to be passed after the passing of this Act, to borrow money to an amount not exceeding a prescribed sum, then in the event of the promoters of the undertaking agreeing at any time after the passing of this Act with any person under the powers of this Act and of either of the Acts hereinbefore mentioned, or of either of the said Acts, only for the purchase of any lands in consideration of the payment of a rentcharge, annual feu duty or ground annual, the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years purchase of any rentcharge, annual feu duty or ground annual, so for the time being payable. If lands purchased by way of rentcharge, borrowing powers to be reduced proportionally.

6. *The clauses contained in the "Lands Clauses Consolidation Act (1845)," relating to the purchase of lands by agreement, and to agreements for sale, and conveyances, sales, and releases of any lands or hereditaments, or any estate or interest therein, by parties under disability, shall extend and be applicable to all purchases of land and hereditaments for public purposes which shall be hereafter made by the council of any city or borough, with the sanction of the [Commissioners of Her Majesty's](a) Treasury, under the powers for that* Certain clauses in 8 & 9 Vict. c. 18, extended to purchases of land, &c., for public purposes.

Sect. 6. *purpose contained in "The Municipal Corporation Mortgages, &c., Act (1860)."*

Repealed except as to Ireland by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50, s. 5). It is substantially re-enacted by section 107 of that Act.

(a) These words in brackets are repealed generally by 55 & 56 Vict. c. 19 (the Statute Law Revision Act, 1892), which also again repeals the whole section as regards England.

Power to
Secretary
for War to
use the
powers
given to
promoters
of under-
takings by
8 & 9 Vict.
c. 18.

7. For the purchase or acquisition of any messuages, lands, tenements, and hereditaments wanted for the service of the Admiralty or of the War Department or for the defence of the realm, it shall be lawful for Her Majesty's principal Secretary of State for the War Department for the time being to use all or any of the powers and provisions by the Lands Clauses Consolidation Act, 1845, and by the Lands Clauses Consolidation (*Scotland*) Act, 1845, given to promoters of the undertaking, as therein mentioned, and for such purposes the said principal secretary shall be deemed and taken to be the promoters of an undertaking within the meaning of the said Act, and all the powers and provisions thereof shall, if used by Her Majesty's principal Secretary of State for the War Department, be treated as if they were contained in the fifth and sixth *Victoria*, chapter ninety-four, for the purpose of being used and made available by the principal officers of Her Majesty's ordnance, and had been transferred to the said principal Secretary for the time being by the eighteenth and nineteenth *Victoria*, chapter one hundred and seventeen, for the purposes aforesaid: Provided always, that nothing herein contained shall authorise any purchase otherwise than by agreement of any land, except according to the provisions of the twenty-third section of the said Act of the fifth and sixth *Victoria*, or prejudice or affect the powers and authorities of the said principal Secretary for the time being under the said last-mentioned statutes or either of them.

The principal powers given to officers of the State to take lands for the purposes of national defence, are as follows:—

I. By the Admiralty—

Sect. 7.

The Admiralty (Signal Stations) Act, 1815 (55 Geo. 3, c. 128). See Appendix.

The Coast-guard Service Act, 1856 (19 & 20 Vict. c. 83), *ante*, p. 437.

The Admiralty Lands and Works Act, 1864 (27 & 28 Vict. c. 57), *post*.

II. By the War Office—

The Defence Act, 1842 (5 & 6 Vict. c. 94), and various Acts extending the powers given by that Act. See this Act in the Appendix, and the notes thereto.

The Military Lands Act, 1892 (55 & 56 Vict. c. 54), *post*.

Acts for specific purposes connected with the Admiralty and other offices also incorporate the Lands Clauses Acts, as, for example, the Public Offices Sites Act, 1882 (45 & 46 Vict. c. 32), and the Military Forces Localization Act, 1872 (35 & 36 Vict. c. 68).

8. This Act shall be read and construed as part of the said Lands Clauses Consolidation Act, 1845, or of the Lands Clauses Consolidation (*Scotland*) Act, 1845, in all matters in which it relates to the said Acts respectively; and in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression of "The Lands Clauses Consolidation Acts Amendment Act, 1860."

This Act and 8 & 9 Vict. cc. 18 and 19 to be construed together.

THE LAND DRAINAGE ACT, 1861.

24 & 25 VICT. CAP. 133.

An Act to amend the Law relating to the drainage of land for agricultural purposes. [6th August, 1861.]

WHEREAS it is expedient to amend the law relating to the drainage of land for agricultural purposes : Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

It is outside the scope of this Work to deal at any length with the powers of commissioners of sewers and others to make, repair, and improve watercourses and outfalls, to build embankments, and generally to do acts necessary for the prevention of floods. The principal statutes in force authorising such works to be done are :—

The Bill of Sewers (23 Hen. 8, c. 5).

The Sewers Act, 1833 (3 & 4 Will. 4, c. 22).

The Sewers Act, 1841 (5 & 6 Vict. c. 45).

The Land Drainage Act, 1847 (10 & 11 Vict. c. 38).

The Land Drainage Act, 1861 (24 & 25 Vict. c. 133).

Powers are given to commissioners of sewers by the Sewers Act, 1833 (sections 24—40), to purchase or take land for the purpose of maintaining or improving existing works, and provisions are therein made for the assessment and payment of compensation, but no power is given to purchase or take lands for new works.

As that Act was prior to the Lands Clauses Act, 1845, the provisions as to taking land and for ascertaining the compensation are contained in that Act. They are somewhat different from those in the Lands Clauses Acts and will be found in the Appendix. It is the first general Act enabling land to be taken for this purpose.

The Land Drainage Act, 1847, enables owners of land to execute drainage works upon neighbouring land, upon an order of the Board of Agriculture. See note to section 83, *infra*.

The Land Drainage Act, 1861, appears to contain certain provisions in substitution for the powers contained in these last-mentioned statutes, and its provisions will probably be followed in most cases, but by section 60, it is expressly provided that all powers given by Part I. of this Act shall be deemed in addition to and not in derogation of any other powers conferred on commissioners of sewers by Act of Parliament, law, or custom ; and these other powers may be exercised as if this Act had not passed.

The Public Health Act, 1875, s. 327, sub-sect. (1), provides that nothing in that Act shall authorise any local authority to interfere with any of the works of commissioners of sewers, without their written consent. Section 13, which vests sewers in the local authority, excludes those made by other authorities or by other persons under statutory powers.

Preliminary.

1. This Act may be cited for all purposes as "The Land Drainage Act, 1861." Sect. 1.
Short title.

2. This Act, in so far as the same relates to commissions of sewers shall include any commission of sewers granted by Her Majesty, and for the time being in force, whether such commission is or is not granted in pursuance of this Act, or has or has not been granted previously to this Act, and in so far as the same relates to commissioners of sewers shall include commissioners acting under any such commission as aforesaid, but it shall not extend to *Scotland* or *Ireland*, or to any part of the metropolis as defined by the Act passed in the session holden in the eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and twenty, intituled *An Act for the Better Local Management of the Metropolis*. Act to
apply to
England
only.

Navigable rivers are usually managed by conservators or commissioners under private Acts and are exempted from the jurisdiction of commissioners. Certain local districts are also exempted. See Kennedy and Sanders on "Land Drainage," p. 70.

3. "Watercourse" shall include all rivers, streams, drains, sewers and passages through which water flows : Definition
of terms.

"Person" shall include any body of persons, corporate or unincorporate, unless there is something in the context inconsistent therewith :

"Owner," as used throughout this Act, except where it is otherwise defined in the provisions relating to rating, shall have the same meaning as it has in "The Lands Clauses Consolidation Act, 1845." (a)

(a) Section 3, *ante*, p. 6.

PART I.

COMMISSIONS OF SEWERS.

* * * * *

Sections 4—13 deal with the issue of a commission of sewers and the assignment of new limits of jurisdiction.

Section 14 provides that a commission once issued shall continue until superseded by Her Majesty.

Section 15 provides as to a quorum.

Sect. 6. **6.** The following persons shall be deemed to be proprietors for the purposes of this Act ; that is to say,

Definition
of pro-
prietors.

(1.) Any person entitled for his own benefit, at law or in equity, for an estate in fee, to the possession or receipt of the rents and profits of any freehold or copyhold land, whether such land is or not subject to incumbrances :

(2.) Any person absolutely entitled in possession, at law or in equity, for his own benefit, to a beneficial lease of land of which not less than twenty-five years are unexpired, whether such land is or not subject to incumbrances ; but no lease shall be deemed to be a beneficial lease, within the meaning of this Act, if the rent reserved thereon exceeds one-third part of the full annual value of the land demised by such lease :

(3.) Any person entitled under any existing or future settlement, at law or in equity, for his own benefit, and for the term of his own life, or the life of any other person, to the possession or receipt of the rents and profits of land of any tenure, whether subject or not to incumbrances, in which the estate for the time being subject to the trusts of the settlement is an estate for lives or years renewable for ever, or is an estate renewable for a term of not less than sixty years, or is an estate for a term

of years of which not less than sixty are unexpired, Sect. 6.
or is a greater estate than any of the foregoing
estates :

- (4.) The word "settlement," as herein used, shall include any Act of Parliament, will, deed, or other assurance whereby particular estates or particular interests in land are created, with remainders or interests expectant thereon :
- (5.) Any body corporate, any corporation sole, any trustees for charities, and any commissioners or trustees for ecclesiastical, collegiate, or other public purposes, entitled at law or in equity, in the case of freehold estates or copyhold estates in fee, and in the case of leasehold estates to a lease for an unexpired term of not less than sixty years.

* * * * *

General Powers of Commissioners.

16. The powers of commissioners of sewers acting within their jurisdiction shall extend to the following acts :—

Declara-
tion of
powers of
commis-
sioners.

- (1.) To cleansing, repairing, or otherwise maintaining in a due state of efficiency any existing watercourse or outfall for water, or any existing wall or other defence against water, hereinafter referred to under the expression "maintenance of existing works :"
- (2.) To deepening, widening, straightening, or otherwise improving any existing watercourse or outfall for water, or removing mill dams, weirs, or other obstructions to watercourses or outfalls for water, or raising, widening, or otherwise altering any existing wall or other defence against water, hereinafter referred to under the expression "improvement of existing works :"
- (3.) To making any new watercourse or new outfall for water, or erecting any new defence against water,

Sect. 16.

to erecting any machinery or doing any other Act not hereinbefore referred to, required for the drainage, necessary supply of water for cattle, warping or irrigation of the area comprised within the limits of their jurisdiction, hereinafter referred to under the expression "the construction of new works :"

Provided,

- (1.) That no person shall by virtue of this Act be compelled to execute at his own expense any works which he would not have been compelled to execute if this Act had not passed.
- (2.) That no work shall be deemed to be a new work that is in substitution for an old one, in cases where such old work is so much out of repair or so inefficient as to make it expedient to construct a new work in place thereof :
- (3.) That full compensation shall be made for all injury sustained by any person by reason of the exercise by the commissioners of the above powers :
- (4.) That the exercise of the foregoing powers shall be subject to the restrictions hereinafter mentioned.

Commissioners of sewers are also authorised to purchase and take lands for the purpose of improving existing works by the Sewers Act, 1833 (3 & 4 Will. 4, c. 22), ss. 24—26. See Appendix. No power is given in that Act to acquire land for new works. It can only be done compulsorily under this Act after obtaining the sanction of Parliament.

"Full Compensation shall be made."—For the general principles of compensation, see the notes to sections 63 and 68 of the Lands Clauses Act, 1845, *ante*, pp. 111 and 129. In the notes to section 63 are discussed the principles of compensation when land is taken, and in those to section 68, the principles when land is injuriously affected.

Compare also section 16 of the Railways Clauses Act, 1845, *ante*, p. 316.

If commissioners acting in excess of their jurisdiction do an act which injures a landowner, he will be entitled to recover damages, although he may in ignorance of the illegality have claimed damages. *Pentney v. Lynn Paving Commissioners*, 12 L. T. (N.S.) 818.

Where drainage commissioners under a private Act made a sluice, which burst owing to the negligence of their servants and neighbouring

land was injured, it was held that the remedy was by an action for damages and that the landowner was not entitled to recover compensation under the Act. *Coe v. Wise*, L. R. 1 Q. B. 711; *Collins v. The Middle Level Commissioners*, L. R. 4 C. P. 279. Sect. 16.

As to the liability of commissioners for injury caused by the negligent manner in which the authorised work is carried out, see *Grocers' Company v. Donne*, 3 Scott, 356; *Clothier v. Webster*, 31 L. J. C. P. 216.

17. The commissioners shall not be entitled to remove or otherwise interfere with any mill dam, weir, or other like obstruction, whereby the level of the water is raised for any milling or other purpose of profit, so as to injuriously affect the supply of water, otherwise than with the consent of the owner of such mill dam, weir, or other like obstruction until the following things have been done; that is to say, Restrictions as to obstructions.

(1.) Their right to do so has been determined in manner hereinafter mentioned :

(2.) Compensation has been made to all parties entitled for the injury which may be caused by such removal or interference.

18. For the purpose of determining the right of the commissioners to remove or otherwise interfere with any such dam, weir, or other like obstruction, there shall be decided, if the owner consent, by two or more justices assembled in petty sessions, but if he do not consent, by arbitration, the questions following; that is to say, Questions as to right to remove any obstructions.

(1.) Whether the proposed removal or interference is necessary for the effectual drainage of land within the jurisdiction of the commissioners :

(2.) Whether the proposed removal or interference will cause any injury to the owner :

(3.) Whether any injury that may be caused by the removal or interference is or is not of a nature to admit of being fully compensated for by money.

19. The consequence of any such decision shall be as follows; that is to say, Consequences of deter-

Sect. 19.

mination
of ques-
tion.

- (1.) If the decision is that such removal or interference is not necessary for the effectual drainage of the lands by the commissioners, the commissioners shall not be entitled to make the same :
- (2.) If the decision is that such removal or interference is necessary for the purpose aforesaid, but that the injury to be caused thereby is not of a nature to be fully compensated for by money, the commissioners shall not be entitled to make the same :
- (3.) If the decision is that such removal or interference is necessary, and that any injury that may be caused can be fully compensated by money, the commissioners shall be at liberty to make the same, upon making compensation as hereinafter mentioned.

Amount
of com-
pensation
how ascer-
tained.

8 & 9 Vict.
c. 18.

20. Where the decision is that the commissioners are entitled to remove or interfere with any such mill dam, weir, or other obstruction, the commissioners shall take the same steps with respect to compensating the parties interested as are required to be taken by the said Lands Clauses Consolidation Act by purchasers in cases where they are authorised to purchase or take lands by special Act.

Where a corporation under a special Act were authorised from time to time, and as they should think proper, to cleanse and otherwise improve a river, and for such a purpose to alter or remove the town mill weir, full compensation being made to all persons sustaining damage, but there being no provision as to taking land except by agreement, and the corporation entered upon the weir and removed part and placed a permanent floodgate, it was held that the remedy of the owner was not to bring an action to restrain the corporation from so doing, but to proceed to recover compensation for the injury sustained, as the placing of the floodgate was not a taking of land. *Holt v. Corporation of Rochdale*, 10 Eq. 354.

Restric-
tions as to
purchase
of land.

21. The commissioners shall not, by virtue of this Act, purchase any land for new works, otherwise than by agreement with the owner thereof, until they have obtained the sanction of Parliament in manner hereinafter mentioned.

Publica-
tion of
notices.

22. The commissioners, before applying for the sanction of Parliament, shall do as follows ; that is to say,

- (1.) Publish once at the least in the *London Gazette*, and Sect. 22.

once at least in each of three consecutive weeks in some newspaper circulated within the limits of their commission, an advertisement describing shortly the nature of the undertaking in respect of which the land is proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of land that they require :

- (2.) Serve a notice in manner hereinafter mentioned on every owner or reputed owner, lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands ; such notice to be served

By delivery of the same personally on the party required to be served, or if such party is absent abroad, to his agent ; or

By leaving the same at the usual or last known place of abode of such party as aforesaid ; or

By forwarding the same by post in a prepaid letter addressed to the usual or last known place of abode of such party.

23. Upon compliance with the provisions hereinbefore contained with respect to advertisements and notices, the commissioners may present a petition to the Inclosure Commissioners. ^{Petition to Inclosure Commissioners.} (a) The petition shall state the land intended to be taken, and the purposes for which it is required. It shall pray that the commissioners may, with reference to such land, be allowed to put in force the powers of the said Lands Clauses Consolidation Act in relation to the compulsory taking of land, and such prayer shall be supported by such evidence as the Inclosure Commissioners (a) require.

(a) Now the Board of Agriculture (52 & 53 Vict. c. 30).

Sect. 24. **24.** Upon the receipt of such petition, and upon proof to their satisfaction of the proper advertisements having been published and notices served, the Inclosure Commissioners shall take such petition into their consideration, and they may either dismiss the same, or they may, if they think fit, send an inspector to the district in which the land is situate, for the purpose of making inquiry as to the propriety of assenting to the prayer of such petition.

Notice of inquiries. **25.** Before commencing his inquiry the inspector shall give such notice as the Inclosure Commissioners direct, of his intention to make the same, and of a time and place at which he will be prepared to hear all persons desirous of being heard before him on the subject-matter of such inquiry.

Provisional order by Inclosure Commissioners to be confirmed by Parliament. **26.** Upon the completion of such inquiry the Inclosure Commissioners may, by provisional order, empower the commissioners to put in force with reference to the land mentioned or referred to in such order the powers of the said Lands Clauses Consolidation Act in relation to the compulsory taking of land; and it shall be the duty of the Inclosure Commissioners as soon as conveniently may be to take all proper steps for the confirmation of such provisional order by Act of Parliament, and when so confirmed it shall be deemed to be a public general Act of Parliament, and to take effect accordingly; but previous to such confirmation it shall not be of any validity whatever.

Expenses of obtaining provisional order. **27.** All costs, charges, and expenses incurred by the Inclosure Commissioners in relation to the obtaining any such act as aforesaid shall be paid by the commissioners out of the rates leviable by them in pursuance of this Act, and applicable to the works with a view to which the provisional order was obtained.

Provisions of 8 & 9 Vict. c. 18, and **28.** Subject to the restrictions herein contained, the commissioners may purchase such lands or easements relating to lands as they may require for the purposes of this Act; and

"The Lands Clauses Consolidation Act, 1845," and the Act **Sect. 23.**
 amending the same, passed in the session of the twenty-third **23 & 24**
 and twenty-fourth years of the reign of Her present Majesty, **Vict.**
 chapter one hundred and six, shall be incorporated with this **c. 106,**
 part of this Act, with the exceptions and subject to the con- **incor-**
 ditions hereinafter contained; that is to say, **porated**
with this
Act.

(1.) There shall not be incorporated with this part of this Act the sections and provisions of "The Lands Clauses Consolidation Act, 1845," hereinafter mentioned; that is to say, section sixteen, whereby it is provided that the capital is to be subscribed before the compulsory powers are to be put in force; section seventeen, whereby it is provided that the certificate of the justices should be evidence that the capital has been subscribed; the provisions relating to the entry upon lands by the promoters of the undertaking, contained in sections eighty-four to ninety-one, both inclusive; section one hundred and twenty-three, whereby a limit of time for the compulsory purchase of land is imposed; the provisions relating to the manner of serving notices; and the provisions relating to access to the special Act:

(2.) In the construction of this part of this Act and the said incorporated Acts this part of this Act shall be deemed to be the special Act, and the commissioners shall be deemed to be the promoters of the undertaking, and the word "land" or "lands" shall include any easement in or out of lands.

It should be noted that the word "lands" includes easements, and will enable the commissioners to acquire easements, if necessary; but it may be doubted whether, in the absence of special provision in the provisional order, that it will enable the commissioners to take possession of a horizontal stratum, for the purpose, for example, of a tunnel. See note "The word 'lands,'" in the notes to section 3 of the Lands Clauses Act, 1845, *ante*, p. 7.

If the commissioners obstruct or destroy an easement over land which they take, the owner of the dominant tenement has no claim for compensation in respect of land taken, but his remedy is for compensation for injuriously affecting his land under section 68. See notes to section 18 of the Lands Clauses Act, 1845; note "Lands," *ante*, p. 33.

Sect. 29.

Notice to
be given
of certain
works.

29. Previously to commencing any improvements in existing works, or any new works where such improvements or new works involve an expenditure of more than one thousand pounds, the commissioners shall cause plans of the proposed work and an estimate of the expense thereof, and of the area within which a rate will be required to be levied to meet such expense, to be made, together with a list of the names and addresses of the persons reputed to be proprietors(a) of the land within such last-mentioned area, with the addition of the number of acres of which each person is reputed to be the proprietor, and shall publish their intention to execute such works two months before commencing the same, in manner following ; that is to say,

By inserting in some newspaper circulating within the limits of their commission, once in every week during such period of two months, a notice explaining briefly the nature of the work, the amount of expense to be incurred, and the area of land within which a rate is proposed to be levied for meeting such expense, describing such area by reference to a deposited plan, or by boundaries, or in such other manner as the commissioners may think best calculated to give information of their intention, and stating a place within the limits of their commission at which the plan and estimate of the works and the list of reputed proprietors may be inspected at all reasonable hours.

By placing a copy of such notice for three successive Sundays on the church door of the principal church or some one of the churches of the parish or parishes in which such works are to be done, or, in the case of any extra parochial place, of some parish immediately adjoining thereto.

(a) See the definition of "Proprietors," in section 6 of this Act, *supra*.

Correc-
tion of
list of pro-
prietors.

30. Any person interested may, at any time before the expiration of such two months as aforesaid, apply to the commissioners to correct the list of reputed proprietors by insert-

ing or expunging the name of any person or by altering the number of acres appropriated by such list to any proprietor, and the commissioners shall hear any application so made, and shall amend the list accordingly, and the decision of the commissioners in respect of such list shall be final ; and at the expiration of the period of two months, or of such further period as the commissioners may fix for the purpose of hearing any application made within such period of two months, the list as settled by the commissioners shall be conclusive evidence of proprietorship for the purpose of ascertaining the proportion of dissenting proprietors as hereinafter mentioned. Sect. 30.

31. If within such period of two months the proprietors of one half of the area of land within which a rate is according to the notice proposed to be levied declare in writing to the commissioners, by notice left at their office, that they are unwilling that such work should be executed, the commissioners shall take no further steps therein ; but if no such declaration of dissent is made, the commissioners may at the expiration of such period of two months commence the proposed work, and repay out of the rates to be levied by them within the area all expenses incurred, not exceeding the estimate published in the notice. Dissent of proprietors of one-half of area conclusive against new works.

32. If the commissioners are unable to discover the proprietor of any lands, they shall give notice to that effect in the list of reputed proprietors made by them, and such land shall, in the event of no proprietor proving his title to have his name inserted in the list before the period hereinbefore named for the completion of the list, be altogether excluded in any computation that may be made of the proportion borne by the dissenting proprietors of any area of land as hereinbefore provided to the aggregate number of the proprietors of such land. Provision in case of no proprietor.

33. Commissioners of sewers, acting within their jurisdiction, may, without the presentment of a jury, make any order in respect of the execution of any work, the levying of Jury may be dispensed with under

Sect. 33. any rate, or doing any act which they might but for this section have made with such presentment; subject to this proviso, that any person aggrieved by any such order made by the commissioners without the presentment of a jury may appeal therefrom in manner hereinafter mentioned.

Sections 34—37 enable commissioners to commute for such sums of money as they think expedient the obligations of persons who by reason of tenure or otherwise are obliged to maintain walls and sewers and other work within their jurisdiction.

Sections 38—41 deal with rates.

Legal Proceedings.

Notices by commissioners, how to be signed.

42. Where any notice is required to be given by the commissioners such notice shall in all cases be sufficiently executed if signed by the clerk to the commissioners; and every notice purporting to be signed by such clerk shall be receivable in evidence before all legal tribunals, and in all legal proceedings, without any other proof.

Notices served on proprietors, &c., to be binding on persons claiming under them.

43. All notices served by the commissioners on any proprietor or owner shall, if due service thereof has been made, be binding on all persons claiming by, from, or under such proprietor or owner, to the same extent as if such notice had been served on such last-mentioned persons respectively.

Notices on owners to be served personally, or left at their places of abode.

44. Except where a special mode of service is provided by this Act, all notices required to be served by the commissioners upon any proprietor or owner of lands shall either be served personally on such parties, or be left at their last usual place of abode, if any such can after diligent inquiry be found, but in case any such parties are absent from the United Kingdom, and their last usual place of abode cannot be found after diligent inquiry, such notices shall be left with the occupier of such lands, or if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Cf. sections 19 and 20 of the Lands Clauses Act, 1845, *ante*, pp. 49—50, and the notes thereto.

45. If any proprietor or owner on whom notice is to be served is a corporation aggregate, or joint stock or other company or body of proprietors or undertakers, such notice shall be left at the principal office of such corporation, company, or body, or if no such office can after diligent inquiry be found, shall be served on some agent, if any, of such corporation, company, or body, but if no such officer or agent can be found it shall be left with the occupier of the lands, or if there be no such occupier, shall be affixed on some conspicuous part of such lands.

Sect. 45.

Notices to corporations to be left at their principal office.

46. Except where a special mode of service is provided by this Act, all notices required to be served by the commissioners upon the occupier of any land shall either be served personally on him or be left at his last usual place of abode, if any such can after diligent inquiry be found, and in case he is absent from the United Kingdom, and his last usual place of abode cannot be found after diligent inquiry, it shall be affixed on some conspicuous part of such premises.

Service of notices on occupiers.

47. Where any order, requisition, or rate has been made by the commissioners, or any act done by them, without the presentment of a jury in pursuance of the powers of this Act, any person aggrieved by such order, requisition, or rate may appeal to the court of quarter sessions against any such order, requisition, rate, or act, and the court may confirm, annul, or modify the same accordingly; but no such appeal shall be entertained unless it is made within four months next after the making of such order or requisition, or the making such rate, or the doing of such act, nor unless ten days' notice in writing of such appeal, previously to the quarter sessions, stating the nature and grounds thereof, is served on the commissioners, nor unless the appellant, within four days after the service of such notice, enter into recognizances with two sufficient sureties, before a justice of the peace, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

Appeal to quarter sessions.

Saving Clauses and Miscellaneous.

Sect. 54. **54.** Nothing in this Act shall authorise the commissioners or any drainage board or owner—

Saving
rights of
canal
owners
and wharf-
ingers.

- (1.) To interfere with any sewers or other works already or hereafter made and used for the purpose of draining, preserving, irrigating, or improving land under any local or private Act of Parliament, so as to injuriously affect the same ;
- (2.) To interfere with any river, canal, dock, harbour, lock, reservoir, or basin, or the supply of water to any river, canal, dock, harbour, lock, reservoir, or basin, so as to injuriously affect the navigation on such river, canal, dock, harbour, lock, reservoir, or basin, or the use or maintenance thereof, or to interfere with any towing-path so as to interrupt the traffic thereof, in cases where any corporation, company, undertakers, commissioners, conservators, trustees, or individuals are by virtue of any Act of Parliament entitled to navigate on or use such river, canal, dock, harbour, lock, reservoir, or basin, or in respect of the navigation on or use of which river, canal, dock, harbour, lock, reservoir, or basin, any corporation, company, undertakers, commissioners, conservators, and trustees, or individuals are entitled by virtue of any Act of Parliament to the receipt of any tolls or other dues ;
- (3.) To interfere with the works or supply of water of any body or persons, corporate or unincorporate, supplying water to any town or place, so as to injuriously affect the same ;
- (4.) To execute any works in, through, or under any wharves, quays, docks, harbours, or basins, belonging to the proprietor or proprietors of any inland navigation constituted by Act of Parliament, or for the use of which they are entitled by virtue of any Act of Parliament to demand any tolls or dues ;

without the consent of such corporation, company, undertakers, commissioners, conservators, trustees, or individuals as are hereinbefore in that behalf respectively mentioned, such consent to be expressed in writing, in the case of individuals under their hands, in the case of a corporation under their common seal, and in the case of a company, undertakers, commissioners, conservators, or trustees, under the hand of their clerk or other duly authorized officer or agent. Sect. 54.

55. Nothing in this Act shall authorise the commissioners to divert any river in such manner as to injure or to diminish the supply of water to any harbour without the consent of the conservators or other authority having the management of such harbour. Commissioners not to divert rivers so as to injure harbours.

56. Any corporation, company, undertakers, commissioners, conservators, trustees, or individuals authorised by virtue of any Act of Parliament to navigate on or use any river, canal, dock, harbour, or basin, or to demand any tolls or dues in respect of the navigation on such river or canal, or the use of such dock, harbour, or basin, may, at their own expense, and on substituting other sewers, drains, culverts, and pipes equally effectual and certified as such by the surveyor of the commissioners or drainage board, take up, divert, or alter the level of sewers, drains, culverts, or pipes constructed by the commissioners or drainage board and passing under or interfering with or with the improvement or alteration of such river, canal, dock, harbour, or basin, or the towing-path of such river, canal, dock, harbour, or basin, and do all such matters and things as may be necessary for carrying into effect such taking up, diversion, or alteration. Power for canal commissioners to alter sewers.

57. Nothing in this Act shall be construed to make liable to the control of the commissioners any river, canal, or inland navigation, or the cuts, reservoirs, feeders, or other works belonging thereto, in cases where such river, canal, Exemptions under local Acts preserved.

Sect. 66. or inland navigation is now under the provisions of any local or private Act of Parliament exempt from such control.

* * * * *

Part II. comprises sections 63—71 and deals with elective drainage districts and drainage boards, of these section 67 provides as follows:—

Powers of
drainage
boards.

67. All powers by this Act or by any other Act of Parliament, law, or custom vested in or exerciseable by commissioners of sewers within the limits of their jurisdiction may, upon the constitution of a drainage district, be exercised by the drainage board of such district within its limits; and all powers hitherto exerciseable by commissioners of sewers within such district shall cease; subject to this proviso, that any person aggrieved by any order, requisition, or rate made by the drainage board, or any act done by them, may appeal therefrom in the same manner in which he is by this Act authorised to appeal against any order, requisition, or rate made by the commissioners or any act done by them.

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PART III.

Power of Private Owners to procure Outfalls.

Applica-
tion for
outfall to
adjoining
owner.

72. Any person interested in land, who is desirous to drain the same, and in order thereto deems it necessary that new drains should be opened through lands belonging to another owner, or that existing drains in lands belonging to another owner should be cleansed, widened, straightened, or otherwise improved, may apply to such owner, who is hereinafter referred to as the adjoining owner, for leave to make such drains or improvements in drains through or on the lands of such owner.

Mode of
making
applica-
tion.

73. Any such application as aforesaid shall be by notice in writing under the hand of the applicant, and shall be served on the owner, and also on the occupier, if the owner be not the occupier in manner in which notices are required to be served on owners and occupiers under the first part of

this Act. The notice shall state the nature of such drains or improvements in drains, be accompanied by a map, on which the length, width, and depth of the proposed drains or improvements in drains shall be delineated, and shall further state the compensation, if any, which the applicant proposes to pay. Sect. 73.

74. The adjoining owner may, by deed under his hand and seal, assent to such application, upon such terms and on payment of such compensation as he may require, and any assent so given shall be binding on all parties having any estate or interest in the land, subject to the following provisions : Assent of adjoining owner.

1stly. That any arrangement entered into by any adjoining owner under any disability or incapacity or not having power to assent to such application, except under the provisions of this Act, shall not be valid unless the same is approved by two surveyors, one of whom is to be nominated by the applicant, and the other by the adjoining owner; and each of such surveyors, if they approve of the arrangement, shall annex to the document containing the same a declaration to that effect, subscribed by them :

2ndly. That any compensation to be paid by the applicant to the adjoining owner in cases where such owner is under any disability or incapacity, or has not power to assent to such application, except under the provisions of this Act, shall be applied in manner in which the compensation coming to parties having limited interests, or prevented from treating, and not making title, is applicable, under "The Lands Clauses Consolidation Act, 1845."

3rdly. That any occupier or person other than the owner interested in the lands shall be entitled to compensation for any injury he may sustain by the

Sect. 74.

making of the proposed drains or improvements in drains, so that the claim therefor be made within twelve months after completion of such drains or improvements in drains, the amount of such compensation to be determined, in case of dispute, in the manner in which disputed compensation for land is required to be determined by the said "Lands Clauses Consolidation Act, 1845."

Record of
assent of
adjoining
owner.

75. The applicant shall forward to the clerk of the peace of the county, riding, or division of the county wherein the land is situate the deed containing the assent of the adjoining owner to the proposed drains or improvements in drains, who shall keep the same in his office as a record of the proceedings between the parties.

Dissent of
adjoining
owner.

76. The adjoining owner shall be deemed to have dissented from the application made to him if he fail to express his assent thereto within one month after the service of the notice of application on him; and in the event of such dissent there shall be decided, by two or more justices in petty sessions assembled, unless the adjoining owner require the same within such period of one month to be decided by arbitration, the questions following; that is to say,

- (1.) Whether the proposed drains or improvements in drains will cause any injury to the adjoining owner, or to the occupier or other person interested in the lands:
- (2.) Whether any injury that may be caused is or is not of a nature to admit of being fully compensated for by money:

And the provisions of the First Part of this Act relating to the decision of the questions therein mentioned shall apply to the decision of the questions mentioned in this section.

The result of any such decision shall be as follows ; that is **Sect. 76.**
 to say, Result of
decision.

- (1.) If the decision is that no injury will be caused to the adjoining owner, to the occupier, or other parties interested in the lands, the applicant may proceed forthwith to make the proposed drains or improvements in drains :
- (2.) If the decision is that injury will be caused to the adjoining owner, occupier, or other parties interested in the lands, but that such injury is of a nature to admit of being fully compensated by money, the justices or arbitrators shall proceed to assess such compensation, and to apportion the same amongst the parties in their judgment entitled thereto ; and on payment of the sum so assessed the applicant may proceed to make the proposed drains or improvements in drains :
- (3.) If the decision is that injury will be caused to the adjoining owner, occupier, or other parties interested in the lands, and that such injury is not of a nature to admit of being fully compensated by money, the applicant shall not be entitled to make the proposed drains or improvements in drains.

77. Where the compensation assessed by the justices or arbitrators under the last preceding section is payable to any owner or other person who is under any disability or incapacity, or is not entitled to receive the same for his own benefit, such compensation shall be applied in the manner in which the compensation coming to parties having limited interests or prevented from treating and not making title is applicable under "The Lands Clauses Consolidation Act, 1845."

Applica-
tion of
compensa-
tion in
case of
owners
under dis-
ability.

78. The justices or arbitrators, as the case may be, in the event of their approving of a scheme of drainage as proposed by the applicant or as modified by themselves, shall cause a

Duty of
arbitra-
tors.

Sect. 78. map thereof to be prepared, and shall certify under their hands the correctness of such map ; and it shall be the duty of the applicant to forward the same to the clerk of the peace of the county, riding, or division of the county wherein the land is situate, who shall keep the same in his office as a record of the proceedings between the parties.

Sections 79—81 deal with the maintenance and cleaning of such drains.

82. All costs, charges, and expenses reasonably incurred by the adjoining owner in respect of any application made in pursuance of this part of this Act shall be defrayed by the applicant.

Costs of adjoining owner.

83. Where any person is desirous, in pursuance of this Part of this Act, of constructing any drain by means whereof any brook, river, or other natural watercourse will be diverted from its ordinary channel into any other brook, river, or natural watercourse, he shall cause a copy of the notice hereby required to be served on the adjoining owner to be published by advertisement once at least in each of three successive weeks in some local newspaper circulating in the district in which the drain proposed to be constructed is situate, and to be served in manner in which notices are required to be served under the First Part of this Act (where no special mode of service is prescribed) on all owners of land abutting upon the brook, river, or other natural watercourse into which the diversion is made, and situate within four miles of the point of junction, and shall deposit a copy of the map hereby required to accompany the notice served on the adjoining owner with the clerk of the peace of the county, riding, or division of a county wherein the proposed drain is situate ; and it shall be lawful for any person being the owner of land capable of being injured by the proposed drain, within eight weeks after the first notice of the proposed drain appears in the newspaper, to serve notice that he

Provision in case of change of natural outfall.

apprehends injury from such drain on the person proposing **Sect. 83.**
to make the same, and thereupon such owner shall be deemed
to have dissented, and shall be entitled to the same rights and
privileges under this Part of this Act as if he were the adjoining
owner.

Powers very similar to those in Part III. of this Act are contained in the Land Drainage Act, 1847 (10 & 11 Vict. c. 38). Owners interested in land desirous of improving and draining it may by that Act apply to the Enclosure Commissioners (now the Board of Agriculture), for power to carry out similar drainage works on the lands of adjoining owners who either dissent or are under disability. The Board of Agriculture may by order authorise the works after inquiry, and the person authorised may enter upon the lands of the neighbouring owners and execute the works, subject to making compensation for any damage occasioned by the exercise of the powers (section 8). The provisions as to compensation are contained in sections 9—11, and are as follows :—

The Land Drainage Act, 1847.

9. *And be it enacted, that*(a) it shall be lawful for the person or persons authorised as aforesaid to enter into and upon any land in the order of the commissioners, or the plan thereunto annexed, described or shown, and in conformity with the terms of such order, but not otherwise, to widen, straighten, deepen, divert, scour, or cleanse any river, stream, ditch, or drain, brook, pool, or watercourse, and to make, open, and cut any new watercourse, side cut, ditch, or drain, and to alter or remove any bank, sluice, floodgate, clough, hatch, weir, dam, or other obstruction, and to make or erect any bank, sluice, floodgate, hatch, ditch, drain, tunnel, or other works necessary or convenient for drainage or for warping, and to dam, bar, and stop up with any weir or dam any river or watercourse, and to erect and maintain on such land steam and other engines and machinery : Provided always that no entry shall be made on any land for the purposes aforesaid, except with the consent of the proprietors thereof, until the amount of compensation for the damage to be occasioned by such entry, and by the execution and maintenance of the works authorised as aforesaid, shall have been agreed upon or ascertained, as the case may be, and paid, under the provisions hereinafter contained or agreed to.

Persons authorized to execute works may enter upon lands for that purpose.

No entry to be made on land without consent until compensation is made.

10. *And be it enacted, that*(a) it shall be lawful for the commissioners by any such order as aforesaid to authorise any person or persons therein mentioned to purchase and take, as the site of any engine house, or for any other purpose necessary for the works thereby authorised, any land, not being in any park or pleasure ground, in such order to be described ; provided always, that not more than three acres be purchased or taken under this clause otherwise than by agreement ; and all the provisions of "The Lands Clauses Consolidation Act, 1845," with respect to the purchase of land otherwise than by agreement shall apply to the purchase of any land not exceeding three acres which shall be specially described in such order, and which shall be thereby authorised to be taken otherwise than by agreement ; and the provisions of the last-mentioned Act with respect to the purchase of land by

Power to purchase lands for sites of engine houses.

Sect. 83. agreement shall apply to the purchase of any land by such order authorised to be purchased except as aforesaid; and all lands to be purchased or taken under this clause shall be conveyed to or held by such persons and upon such trusts as the commissioners shall by such order direct.

The Lands
Clauses
Consolidation
Act,
1845
(8 & 9 Vict.
c. 18), in-
corporated
with this
Act.

11. *And be it enacted, that*(a) the compensation to be paid for the damage or injury to any lands which may be entered upon, cut through, or interfered with under any such order of the commissioners as aforesaid, may be agreed upon with the persons and in the manner provided by "The Lands Clauses Consolidation Act, 1845," with respect to the purchase of land otherwise than by agreement; and the persons who in such order of the commissioners shall be authorised to execute the works in such order mentioned shall, for the purposes of the last-mentioned Act and of this Act, be deemed the promoters of the undertaking; and all other the provisions of "The Lands Clauses Consolidation Act, 1845," shall be incorporated with this Act, and shall apply thereto, and to the works and purchases to be authorised by the commissioners, in such and the same manner as if the works and purchases which shall be authorised by the commissioners had been set forth and authorised to be executed and made by this Act.

(a) These words are repealed by the Statute Law Revision Act, 1891.

THE RAILWAYS CLAUSES ACT, 1863.

26 & 27 VICT. c. 92.

An Act for consolidating in one Act certain provisions frequently inserted in Acts relating to railways.

[28th July, 1863.]

* * * * *

PART I.

CONSTRUCTION OF A RAILWAY.

3. This part of this Act shall apply to the railway authorised to be constructed by any special Act hereafter passed and incorporating this part of this Act. Sect. 3.

In this part of this Act—

Applica-
tion of
Part I. and
interpre-
tation of
terms.

All terms used have the same meanings as the same terms have when used in the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation (Scotland) Act, 1845, respectively.

Part I. of this Act dealing with the construction of a railway comprises sections 3—19.

* * * * *

Alteration of Engineering Works.

4. Notwithstanding anything in the said Railways Clauses Consolidation Acts, respectively contained, the company, in the construction of the railway, may deviate from the line or level of any arch, tunnel, or viaduct, described on the deposited plans or sections, so as the deviation be made within the limits of deviation shown on those plans, and subject to the limitations contained in sections eleven, twelve, and fifteen of those Acts respectively, and so as the nature of the work described be not altered, and may also substitute any

Power to
alter
engineer-
ing works.

Sect. 4. engineering work not shown on the deposited plans or sections, for an arch, tunnel, or viaduct, as shown thereon ; provided that every such substitution be authorised by a certificate of the Board of Trade ; and the Board of Trade may grant such certificate in case it appears to them, on due enquiry, that the company has acted in the matter with good faith, and that the owners, lessees, and occupiers of the lands in which the substitution is intended to be made consent thereto, and also that the safety and convenience of the public will not be diminished thereby.

Provided, that nothing in the present section shall affect any power given to the company or to the Board of Trade by sections eleven, twelve, fourteen, or fifteen of the last-mentioned Acts respectively.

This section amends sections 11 and 13 of the Railways Clauses Act, 1845, *ante*, pp. 311 and 313.

Level Crossings.

• • • • •

Board of
Trade may
require
bridge
instead of
level
crossing.

7. The Board of Trade may, if it appears to them necessary for the public safety, at any time after the passing of the special Act, require the company, within such time as the Board of Trade directs, and at the expense of the company, to carry the turnpike road or public carriage road either under or over the railway by means of a bridge or arch, instead of crossing the same on the level, or to execute such other works as, under the circumstances of the case, may appear to the Board of Trade best adapted for removing or diminishing the danger arising from the level crossing.

Where the road is so carried either under or over the railway, it shall not be necessary for the company to erect or maintain a lodge at the point where the road is crossed, or to appoint a person to watch or superintend the crossing thereat, nor shall they be liable to any penalty for failure so to do. (a)

(a) Section 6 requires that at a level crossing the company shall erect a lodge.

8. If the Board of Trade certifies that the public safety requires additional lands to be taken by the company for the purpose of the work directed by the Board of Trade to be executed, the company may subject to the provisions of the Lands Clauses Consolidation Act, 1845, or the Lands Clauses Consolidation (Scotland) Act, 1845, as the case may require, enter upon, take, and use all or any part of the land specified in the certificate of the Board of Trade as being necessary for the purpose of the work ; and the Board of Trade before issuing the certificate shall cause at least three months' notice to be given to any person who may be entitled to claim under the last-mentioned Acts, or otherwise, compensation in respect of the taking of such lands or in respect of such work.

Sect. 8.
Power to
company
to take
additional
land for
such work

By section 15 of the Railway Regulation Act, 1842 (see same set out in note to section 16 of the Railways Clauses Act, 1845, *ante*, p. 322), railway companies are given power to take additional lands when the Board of Trade are of opinion that for the public safety that additional land should be taken.

Junctions.

Sections 9—12 deal with junctions between railways. Sections 10 and 11 deal with the acquisition of easements in lands of the other company for the purposes of the junction.

10. With respect to any lands belonging to the company, or person to whom the other railway belongs, which the company are, by the special Act authorised to use, enter upon, or interfere with, for the purposes of the junction, the company shall not, except by agreement, or unless otherwise provided in the special Act, purchase and take the same, but the company may purchase and take, and such other railway company or person may and shall sell and grant accordingly, an easement or right of using the same for the purposes of the junction.

Company
to acquire
only ease-
ments in
land of
other
railway
company.

“ Unless otherwise provided.”—It seems to be settled law that a later railway company cannot acquire compulsorily the soil and freehold in lands already vested in and actually used by an earlier railway company for the purposes of the undertaking ; although the land lie within the “ limits of deviation ” shown by the parliamentary plans, of the later

Sect. 10. company and that company has the usual powers of taking the lands delineated. The power for that purpose must be given in express terms. It was so determined prior to this Act in *Reg. v. The South Wales Railway Company*, 14 Q. B. 902; *Great Northern Railway Company v. East and West India Docks Company*, 7 A. C. 356; *Manchester, Sheffield, and Lincolnshire Railway Company v. Great Northern Railway Company*, 9 Hare 284; *Oxford, Worcester, and Wolverhampton Railway Company v. South Staffordshire Railway Company*, 1 Dr. 255. Following these decisions it has been held that the words in this section "unless otherwise provided in the special Act" are not satisfied by anything less than an express and definite provision in the special Act authorising the compulsory purchase of the land of the other company which is used for the purposes of the railway. *Dublin and Drogheda Railway Company v. Navan and Kingcourt Railway Company*, 1 R. 5 Eq. 393. Where two companies have power to take the same piece of land, the Court will not restrain one taking it if the other has not acquired a title in manner provided by the Lands Clauses Acts. *Bristol and North Somerset Railway Company v. Somerset and Dorset Railway Company*, 22 W. R. 399, 601.

"For the purposes of the Junction."—These words are apparently not to be confined to the actual union of the two lines, but include the formation of all works necessary for that junction, even where the junction is a branch railway. S. C., p. 401; *Great Northern Railway Company v. East and West India Docks Company*, 7 R. O. 356, p. 368.

Not to
take lands
or inter-
fere with
works of
other com-
pany
further
than
necessary.

11. Nothing relative to the junction in this Act contained shall be deemed to authorise the company for the purposes of the junction to take or enter upon any lands belonging to the company or person to whom the other railway belongs, or to alter or interfere with any railway, or any of the works thereof, further or otherwise than is necessary for making the junction and intercommunication between the railways, as shown on the deposited plans and sections of the railway to which the special Act relates, without the previous consent in writing in every instance of such other railway company or such person.

* * * * *

PART II.

Extension of Time.

Parties
aggrieved
by exten-
sion of

20. Where a railway is authorised to be constructed by a special Act passed either before or after the passing of this Act, and the time limited by the special Act for the exercise

of powers of compulsory purchase of lands, or of powers for **Sect. 20.**
 construction of the railway and works, is extended by a time may
 special Act hereafter passed and incorporating this part of have com-
 this Act, then and in every such case the justices, arbitrators, pensation
 umpires or juries, as the case may be, who award or assess for addi-
 the compensation to be made by the company to the owners tional
 or occupiers of, or other persons interested in, lands taken or damage.
 used for the purposes of the railway and works, or injuriously
 affected by the construction thereof, shall, in estimating the
 amount of such compensation, have regard to, and assess
 compensation for, the additional damage (if any) sustained
 by those owners, occupiers, or other persons, by reason of
 the extension of time.

21. The extension of time shall not affect any contract **Existing**
 entered into or notice given by the company before the **contracts**
 passing of the special Act granting the extension, for pur- **and notices**
 chasing, taking, or using any lands which the company was **to take**
 entitled to purchase, take, or use ; but every such contract **lands not**
 and notice shall be construed and take effect, and the same **to be**
 proceedings may be had thereunder, and all parties thereto **affected.**
 shall be entitled to the same rights and remedies in respect
 thereof, at law and in equity, as if the extension had not been
 granted.

* * * * *

PART V.

Amalgamation.(a)

45. All works which the dissolved company is at the **Unexe-**
 time of amalgamation authorised or bound to execute and **cuted**
 complete, and which are not then executed or completed, **works of**
 may or shall (as the case may require) be executed or com- **dissolved**
 pleted by the amalgamated company, and for that purpose **companies**
 the amalgamated company shall have and be subject to all **may be**
 the powers, rights, and conditions which were conferred or **completed.**
 imposed upon the dissolved company, and which but for the

Sect. 45. passing of the amalgamating Act might have been exercised by or enforced against the dissolved company.

(a) This part (sections 36—55) of the Act applies in all cases where two or more companies are amalgamated by special Act passed after this Act and incorporating it, and where one or both are dissolved.

Where land was sold to a company and part of the consideration was the making of certain accommodation works and rendering of certain services, and after some years the company was dissolved and the undertaking transferred to another company, specific performance of the agreement to make the works and render the services was ordered as against the purchasing company. *Fortescue v. Lostwithiel and Fowey Railway Company* (1894), 3 Ch. 621.

Contracts for land entered into by dissolved companies to be executed.

46. Where the dissolved company has under any special Act entered into any contract for the purchase of or taken or used any lands, which at the time of amalgamation have not been effectually conveyed to the dissolved company, or the purchase money in respect of which has not been duly paid by the dissolved company, then and in every such case the contract, if in force at the time of amalgamation, shall thereafter be completed by, and such lands shall be conveyed to, the amalgamated company, or as the amalgamated company directs, and the purchase money shall be paid and applied pursuant to the special Acts relating to the dissolved company; and those Acts shall, in relation to the completion of the contract and the purchase and the conveyance of the lands, and the payment and application of the purchase money in respect thereof, be read and construed as if the amalgamated company were the company named in the Acts and contract.

Application of money paid into bank or to trustees.

47. Where any money has, before the time of amalgamation, been paid by the dissolved company, or is thereafter paid by the amalgamated company under any special Act relating to the dissolved company, into the Bank of England, or into one of the incorporated or chartered banks in Scotland, or into the Bank of Ireland, or to any trustee or trustees, on account of the purchase of any lands, or any interest therein, or for any compensation or satisfaction, or

on any other account such money, or the stocks, funds, or securities in or upon which the same then is or thereafter may be invested by order of any court, or otherwise, and the interest, dividends, and annual produce thereof, shall be applied and disposed of pursuant to such special Act ; and that and every other Act shall, in relation to such money, stocks, funds, or securities, or the interest, dividends, or annual produce thereof, be read and construed as if the amalgamated company were the company therein named with reference to the same money, stocks, funds, securities, interest, dividends, or annual produce. Sect. 47.

As to the apportionment of the costs in respect of moneys in Court when some of the companies paying in have amalgamated, see note to section 80 of the Lands Clauses Act, 1845, *ante*, pp. 114, 115.

THE ADMIRALTY LANDS AND WORKS ACT, 1864.

27 & 28 VICT. CAP. 57.

An Act to make provision respecting the acquisition of lands required by the Admiralty for the public service, and respecting the use and disposition thereof, and the execution of works thereon. [25th July, 1864.]

WHEREAS it is expedient to make provision for the acquisition by the Admiralty, by agreement, of lands required for the public service :

And whereas it is expedient to consolidate into one general Act sundry provisions usually introduced into special Acts from time to time empowering the Admiralty to purchase particular lands for the public service by agreement or compulsorily, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several special Acts as for insuring greater uniformity in the provisions themselves :

And whereas it is expedient to make provision respecting the use and management of lands held by the Admiralty for the public service, and respecting the disposition thereof when no longer required for the public service, and also respecting the execution of works by the Admiralty in certain cases :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Lands vested in the Admiralty by an Order in Council under the Defence Act, 1842, shall by the Defence Act Amendment Act, 1864 (27 & 28 Vict. c. 89), s. 4, vest and be held and used according to the provisions of this Act as if the same had been purchased or taken by agreement under this Act.

*Preliminary.***Sect. 1.**

1. This Act may be cited as The Admiralty Lands and Works Act, 1864. Short title.

2. In this Act—

Interpre-
tation of
terms.

The term “the Admiralty” means the Lord High Admiral of the United Kingdom or the commissioners for executing the office of Lord High Admiral.

The term “the Lands Clauses Acts” means with respect to lands in *England* The Lands Clauses Consolidation Act, 1845, and with respect to lands in *Scotland* The Lands Clauses Consolidation (*Scotland*) Act, 1845, together with in each case The Lands Clauses Consolidation Acts Amendment Act, 1860, and with respect to lands in *Ireland* The Railways Act (*Ireland*), 1851, including Acts incorporated in or amending the same :

The term “lands” includes any estate, term, easement, right, or interest in, to, over, or affecting lands.

In the construction of the Lands Clauses Acts in connection with this Act the term “the promoters of the undertaking” therein used shall mean the Admiralty, and the term “lands” therein used shall have the meaning hereinbefore assigned to it.

“*Lands.*”—See the note to section 3 of the Lands Clauses Act, 1845, *ante*, p. 7.

As to what is to be deemed the special Act in the construction of this Act and the Lands Clauses Acts, see sections 4 and 5, *infra*.

I.—ACQUISITION OF LANDS BY AGREEMENT.

3. Subject and according to the provisions of this Act, the Admiralty may from time to time by agreement purchase or take lands requisite for Her Majesty’s Naval Service, or for the use or requirements of any force or department in the employment or under the direction or control of the Admiralty, and for that purpose may enter into, execute, and do all necessary and proper contracts, assurances, and things. Power to Admiralty to take lands by agreement.

Sect. 4.
Incorporation of
Lands
Clauses
Acts,
except
provisions
giving
compul-
sory
powers, &c.

4. For the purposes of any such purchase or taking, the Lands Clauses Acts shall be incorporated with this Act (for which purpose this Act shall be deemed the special Act), except as to so much of the Lands Clauses Acts as relates to the purchase or taking of lands otherwise than by agreement, (a) and to access to the special Act. (b)

(a) These are sections 16—68.

(b) Sections 150, 151.

II.—ACQUISITION OF LANDS UNDER SPECIAL ACTS.

Incor-
poration
of Lands
Clauses
Acts with
special
Acts.

5. Where by any special Act of the present or any future session compulsory powers of purchasing or taking particular lands are given to the Admiralty, the Lands Clauses Acts shall, subject to the provisions of this Act, be incorporated with the Act giving those powers (which shall for this purpose be deemed the special Act), except as to so much of the Lands Clauses Acts as relates to access to the special Act.

Power to
Admiralty
to with-
draw
notice for
purchase
within
limited
time.

6. If in any case, after notice has been given by the Admiralty for the compulsory purchase or taking of any lands under any such special Act as aforesaid of the present or any future session, it appears to the Admiralty, from a change of circumstances, or other reasons, unnecessary or inexpedient to complete the purchase or taking of such lands, or any part thereof, the Admiralty may within two months after giving the notice give to the parties entitled to receive the first notice a further notice to the effect that they thereby withdraw the first notice wholly or in part, and thereupon the lands comprised in the notice of withdrawal shall be discharged from the effect of the first notice wholly or to the extent of the notice of withdrawal (as the case may be); provided that nothing herein shall—

(1.) Prejudice any claim of any owner of or person interested in such lands for compensation for such damage (if any) as he may have sustained in consequence of the giving of the first notice; or

- (2.) Give to any person receiving notice for the purchase or taking of lands any further or other right as against the Admiralty than he would have had if this enactment had not been made. Sect. 6.

As to the effect of serving a notice to treat in the absence of such a provision, see the notes to section 18 of the Lands Clauses Act, 1845, *ante*, pp. 41, 46, and see *R. v. Commissioners of Woods and Forests*, 15 Q. B. 761.

7. In every such special Act as aforesaid of the present or any future session there shall also be incorporated, where the lands authorised to be purchased or taken compulsorily are situate in *England* or *Ireland*, sections seven and ten of the Railways Clauses Consolidation Act, 1845, (a) and where the lands are situate in *Scotland*, sections seven and ten of the Railways Clauses Consolidation (*Scotland*) Act, 1845, for which purpose such Act of the present or any future session shall be deemed the special Act, and the Admiralty shall be deemed the company.

Incorporation of Railways Clauses Acts as to correction of errors, &c., in books of reference, &c.

(a) See *ante*, p. 309.

8. The powers of the Admiralty for the compulsory purchase of lands for the purposes of any such special Act as aforesaid of the present or any future session shall not be exercised after the expiration of five years from the passing of that Act.

Limit of time for compulsory purchases.

In the absence of such a provision the period would be three years under section 123 of the Lands Clauses Act, 1845, and see the note thereto, *ante*, p. 271.

III.—VESTING, MANAGEMENT, &C. OF LANDS.

9. Lands purchased or taken by the Admiralty as aforesaid, by agreement or compulsorily, shall, according to the nature and quality of such lands, and the estate, term, or interest acquired by the Admiralty therein, vest in the Admiralty for the time being, and go to and be held by the Lord High Admiral for the time being, or the Commissioners

Lands to vest in Lords of Admiralty, &c., for the time being.

Sect. 9. for the time being for executing the office of Lord High Admiral, in succession, in trust for Her Majesty, her heirs and successors, for the public service.

Lands may be vested in the Admiralty under section 5 of the Defence Act, 1842, by Order in Council : see Appendix.

By the Admiralty Powers Act, 1865 (28 & 29 Vict. c. 124), the provisions of this Act as to the user and management of lands, and as to actions in respect of lands, shall apply in relation to all lands for the time being vested in or purchased by the Commissioners of the Admiralty. Section 1.

Powers of management, &c., of lands.

10. Subject to the provisions of this Act and of any such special Act as aforesaid of the present or any future session, the Admiralty may use lands purchased or taken by them under this Act or under any such Act in such manner as may seem most beneficial for the public service, and shall have in relation thereto all such powers of management and leasing, and all such other powers, and all such rights, as would be had in relation thereto by any individual holding the same for such estate, term, or interest as the Admiralty have therein.

Actions and suits by and against Admiralty as to lands.

11. The Admiralty may bring or defend any action or suit relative to any lands contracted to be purchased or taken by them under this Act, or under any such special Act as aforesaid of the present or any future session, and may bring any action of ejectment or other action or suit for recovering possession of any lands purchased or taken by them under this Act, or under any such special Act as aforesaid of the present or any future session, and may distrain or sue for any arrears of rent due to them in respect thereof; and may bring any action or suit in respect of any trespass or encroachment committed thereon or damage done thereto, or any other action or suit in respect thereof, and may defend any action or suit in respect thereof; and in every such action or suit the Admiralty may be styled "The Lord High Admiral of the United Kingdom" or "The Commissioners for executing the office of Lord High Admiral of the United Kingdom" (as the case may require), without more; and

any such action or suit shall not be affected by any change in the Admiralty; and in any such action or suit the Admiralty shall be liable and entitled to pay or receive costs according to the ordinary rules observed in actions between subject and subject. **Sect. 11.**

See further provisions as to suits against the Admiralty in the Admiralty Powers Act, 1865 (28 & 29 Vict. c. 124).

Sections 12 and 13 deal with the power of the Admiralty to recover land from their tenants, on the expiration or determination of their tenancies.

Sale.

14. Notwithstanding anything in this Act, such provisions of the Lands Clauses Acts as relate to the disposal of superfluous lands^(a) and to the effect of the words "grant"^(b) and "dispose" respectively in any conveyance, shall not apply to lands purchased or taken by the Admiralty under this Act or under any such special Act as aforesaid of the present or any future session. Exception from incorporation of provisions as to sale of superfluous lands.

(a) Sections 127—132, *ante*, p. 275.

(b) Section 132, *ante*, p. 286.

15. Where any lands purchased or taken by the Admiralty under this Act or under any such special Act as aforesaid of the present or any future session appear to the Admiralty to be no longer required to be held by them for the public service, the Admiralty may, with the previous consent of the Lords Commissioners of the Treasury, sell the same, and may for that purpose enter into, execute, and do all necessary or proper contracts, assurances, and things. Power to Admiralty to sell lands not required for public service.

16. Nothing in this Act shall take away any right of pre-emption to which any person is for the time being entitled under the Lands Clauses Acts in respect of any lands purchased or taken by the Admiralty under this Act, or under any such special Act as aforesaid of the present or any future session. Rights of pre-emption preserved.

See sections 128—130, *ante*, p. 282.

Sect. 17. **17.** The purchase money payable on any sale under this Act shall be paid to Her Majesty's Paymaster-General, whose receipt shall be an effectual discharge for the same.

Payment
of pur-
chase
money.

Lands
vested in-
defeasibly
in pur-
chaser.

18. On the payment of such purchase-money and the execution and delivery to the purchaser by the Admiralty of the necessary or proper assurance of the lands sold, the purchaser shall notwithstanding any defect in the title of the Admiralty thereto, stand seised or possessed thereof for such estate or interest as may be expressed or intended to be assured to him, freed and absolutely discharged (save as in the assurance may be expressed) from all prior estates, interests, rights, and claims therein or thereto.

Compensation by
Admiralty
for prior
interests
(if any)
afterwards
estab-
lished.

19. If, nevertheless, at any time after any such sale, any such prior estate, interest, right, or claim as aforesaid is made out to the satisfaction of the Admiralty to be capable of being established at law or in equity, or is so established, the Admiralty shall make compensation for the same.

For the purposes of the present section the provisions of the Lands Clauses Acts with respect to interests in lands which have by mistake been omitted to be purchased shall apply and take effect as if the lands had not been sold by the Admiralty, or as near thereto as circumstances admit, with this addition namely,—that such compensation shall not in any case exceed the amount of the purchase money received by the Admiralty on the sale of the lands in respect whereof such estate, interest, right, or claim is made out or established, exclusive of the value of any buildings or improvements erected or made thereon by the Admiralty for the public service.

IV.—WORKS.

Incorporation of
Railways
Clauses
Acts as to

20. Where, by any such special Act as aforesaid of the present or any future session, powers for the execution of particular works are given to the Admiralty, there shall be incorporated with the Act giving those powers (which shall

for this purpose be deemed the special Act) the following provisions namely :—

Sect. 20.
certain
works,
roads, &c.

Where the lands on which the works are authorised to be executed are situate in *England* or *Ireland*, sections eighteen, nineteen, twenty, twenty-one, twenty-two, and twenty-four of the Railways Clauses Consolidation Act, 1845,(a) and the provisions of the same Act with respect to the temporary occupation of lands near the railway during the construction thereof : (b)

Where the lands on which the works are authorised to be executed are situate in *Scotland*, sections eighteen, nineteen, twenty, twenty-one, twenty-two, and twenty-four of the Railways Clauses Consolidation (*Scotland*) Act, 1845, and the provisions of the same Act with respect to the temporary occupation of lands near the railway during the construction thereof :

And for the purposes of the present section the works authorised to be executed shall be deemed the railway, and the Admiralty shall be deemed the company, within the meaning of the incorporated provisions.

(a) *Ante*, pp. 323—325.

(b) Sections 30—44, *ante*, pp. 326—335.

V.—MISCELLANEOUS.

21. Notwithstanding anything in this Act, so much of any provision by this Act incorporated with any such special Act as aforesaid of the present or any future session as requires a bond to be given in relation to any lands or works shall not be incorporated with such Act, but in any such case, in lieu of such bond, and with the same effect as if such bond were given, the Admiralty shall give an undertaking in writing to the like purport (as nearly as circumstances admit) as the condition of such bond. (a)

Exception
from in-
corpora-
tion of
require-
ments as
to bonds.

(a) See, for example, section 85 of the Lands Clauses Act, 1845, *ante*, p. 222.

Sect. 22. **22.** All purchase, compensation, or other money under this Act, or under any such special Act as aforesaid of the present or any future session, agreed to be paid by or recovered against the Admiralty, shall be paid by them out of money to be provided and appropriated for that purpose by Parliament.

Service of notices, &c. **23.** Any notice, summons, writ, or other document required to be served on the Admiralty for the purposes of this Act, or of any such special Act as aforesaid of the present or any future session, may be served by being delivered to the Secretary of the Admiralty, or by being sent to him by post in a registered letter addressed to him at the Admiralty Office, *Whitehall, London*, or by being left for him there; and any document so sent by post shall be considered as served on the day on which such letter would be delivered in the ordinary course of post.

Any notice, summons, writ, or other document required to be served on behalf of the Admiralty for the purposes aforesaid may be given under the hand of such officer or person as the Admiralty from time to time direct.

Application of pecuniary penalties, &c. **24.** Notwithstanding anything in this Act, or in any Act relating to municipal corporations or to the metropolitan police, or in any other Act, any pecuniary penalty or other money recovered under this Act, or under any such special Act as aforesaid of the present or any future session, or in relation to lands purchased or taken by the Admiralty under this Act or under any such Act, shall be paid and applied as the Admiralty direct.

Protection to Admiralty against penalties, &c. **25.** The Admiralty shall not, by reason of anything done or omitted to be done in the execution or intended execution or in pursuance of this Act or of any such special Act as aforesaid of the present or any future session, or in relation to any lands purchased or taken by them under this Act or under any such Act, be liable collectively or individually to

any fine, penalty, or forfeiture, or to execution of any process **Sect. 25.**
against the person or property, anything in any Act incor-
porated with this Act or with any such Act notwithstanding.

26. The provisions of this Act respecting actions and **Extension**
suits by and against the Admiralty relative to lands shall **of provi-**
apply in relation to all lands for the time being purchased or **sions as**
taken or contracted to be purchased or taken by the Admiralty **to actions**
under any general or special Act in force at the passing of **and suits.**
this Act.

27. Nothing in this Act shall take away or prejudicially **Nothing**
affect any power, right, or authority that would or might have **to affect**
been vested in or exercised by the Admiralty if this Act had **rights of**
not been passed. **Admi-
ralty.**

Powers are also given to the Admiralty to purchase and take lands under the Admiralty (Signal) Stations Act, 1815 (55 Geo. 3, c. 128) (see the same in the Appendix), and also under the Coast Guard Service Act, 1856 (19 & 20 Vict. c. 83), *ante*, p. 437. By the Lands Clauses Act, 1860, s. 7 (*ante*, p. 439), the Secretary for War may use the powers of the Lands Clauses Acts to purchase and take land for the purposes of the Admiralty.

THE RAILWAYS CONSTRUCTION FACILITIES ACT, 1864.

27 & 28 VICT. CAP. 121.

*An Act to facilitate in certain cases, the obtaining of powers for
the construction of railways.* [29th July, 1864.]

WHEREAS it is expedient to facilitate the making of branch and other lines of railway, and deviations of existing railways, and of railways in course of construction, and also the execution of new works connected with or for the purposes of existing railways :

And whereas, the object aforesaid would be promoted if, where all landowners and other parties beneficially interested are consenting to the making of a railway or the execution of a work, the persons desirous of making or executing the same were enabled to obtain power to do so on complying with the conditions of a general Act of Parliament, without being obliged to procure a special Act :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

* * * * *

Contracts for Land.

Sect. 3.

Power for
promoters
of railway
and all
persons
interested
in land to
enter into
provi-
sional con-

3. Where promoters of a railway intend to apply under this Act for authority to make the railway they and all parties seised or possessed of, or entitled to lands required for the railway shall, in order to the purchase or taking and sale of those lands for the railway, have all such powers and capacities as, in order to the purchase or taking and sale of lands required for an undertaking authorised by a special Act of

Parliament, are conferred by the Lands Clauses Acts, on the promoters of the undertaking so authorised, and on parties seised and possessed of or entitled to lands, or any estate, right, or interest in lands, required for that undertaking ; all which powers and capacities shall be enjoyed, and may be exercised by the promoters, and by all such parties as aforesaid, as fully and effectually in all respects as if the promoters had obtained a special Act incorporating the Lands Clauses Acts, and authorising them to make the railway, and to purchase or take the lands required for the same ; subject, nevertheless, to the following restrictions and provisions ; namely—

Sect. 3.
tracts for
land
required.

- (1.) Nothing herein shall confer on the promoters and parties aforesaid, any of the powers or capacities conferred by the part of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement, or by the part of those Acts with respect to the entry upon lands by the promoters of the undertaking, or by such provisions of those Acts as provide for the determination or ascertainment of the amount of any purchase or compensation money, or the settlement of any apportionment or other matter, otherwise than by agreement (except only as to such of those provisions as provided for the determination of the amount of compensation to be paid for enfranchisement of copyholds ; and for the purposes of the present section, section 96 of the Lands Clauses Consolidation Act, 1845, relating to the enfranchisement of copyholds, shall be read and have effect as if the limitation of time therein contained were omitted therefrom) :
- (2.) Any party under disability or incapacity, and not having power to sell and convey or release any lands, except under the Lands Clauses Acts, as applied by the present section, shall have capacity only to contract with the promoters for the sale of

Sect. 3.

those lands, and shall not (before such a certificate of the Board of Trade, as is hereinafter provided for, comes into operation) have capacity, further or otherwise than if this Act had not been passed, to carry the contract into execution, or in pursuance thereof to convey or deliver possession of or release those lands : (a)

- (3.) The promoters (before such a certificate as aforesaid comes into operation) shall be empowered by this Act only to contract for lands, and they shall not have capacity, further or otherwise than if this Act had not been passed, to take or hold lands.

(a) See section 7 of the Lands Clauses Act, 1845, *ante*, p. 19.

Contracts
for sale of
lands
belonging
to the
Crown or
Duchy of
Lancaster
or of Corn-
wall.

4. Where lands required for the railway belong to or are enjoyed by Her Majesty the Queen, her heirs or successors, in right of the Crown, or form part of the possessions of the Duchy of Lancaster or of the Duchy of Cornwall, any contract for the purposes of this Act may be entered into in respect of those lands, as follows ; namely—

In the first-mentioned case, by the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or one of them, with the consent of the Commissioners of Her Majesty's Treasury ;

In the secondly-mentioned case, by the Chancellor of the Duchy, by writing under his hand, attested by the clerk of the Council of the Duchy ;

In the thirdly-mentioned case, by the Duke of Cornwall or other persons for the time being empowered to dispose for any purpose of lands of the Duchy.

User of
or inter-
ference
with
public
or turn-
pike roads.

5. Notwithstanding anything in this Act, it shall not be necessary for the promoters, before applying under this Act for authority to make the railway, to enter into any contract with respect to any part of a turnpike road, or public highway

intended to be taken or used, or to be diverted or otherwise Sect. 5.
interfered with, for the purposes of the railway ; but the
Board of Trade, before they settle a draft of such a certificate
as hereinafter provided for, shall be satisfied that due pro-
vision is made for the interests of the trustees or other persons
having the management of every such road or highway, and
for the safety and convenience of the public in relation
thereto.

See sections 16 and 46 of the Railways Clauses Act, 1845, *ante*,
pp. 321, 336.

After the promoters have contracted for the purchase of all the lands
required for the railway, they may apply to the Board of Trade for a
certificate, who may after hearing all objections, issue a draft certificate
to be laid before Parliament. If it is not objected to, a certificate may
then be issued, which shall have all the effect of a special Act. If it is
objected to, it shall not be further proceeded with, and all contracts for
the purchase or taking of lands for the purposes of the undertaking
shall cease to be binding on either party. Sections 6—22.

* * * * *

Lands.

23. The Lands Clauses Acts shall be incorporated with Incorporation
of
Lands
Clauses
Acts in
certificate,
except
provisions
giving
compul-
sory
powers, &c.
the certificate (which shall for this purpose be deemed the
special Act), except as may be therein excepted, and except
as to the following provisions ; namely,

- (1.) With respect to the purchase and taking of lands
otherwise than by agreement.
- (2.) With respect to the entry upon lands by the promoters
of the undertaking :
- (3.) So much of those Acts as provides for the determination
or ascertainment of the amount of any purchase or
compensation money, or the settlement of any
apportionment or other matter, otherwise than by
agreement (but excluding from this exception so
much of those Acts as provides for the determination
of the amount of compensation to be paid for
enfranchisement of copyholds).

Incorporation of Company.

* * * * *

Sect. 30. **30.** Contracts relative to the purchase or taking of lands for the railway, entered into by the promoters before the incorporation of the company by the certificate, shall be as binding on the company as if they had been entered into by the company.

See note to section 6 of the Lands Clauses Act, 1845, *ante*, p. 13.

Construction of Railway.

Incorporation of Railways Clauses Acts in certificate, except as to compulsory powers, &c.

31. The Railways Clauses Acts shall be incorporated with the certificate (which shall be deemed by the special Act), except as may be therein excepted, and except as to the following provisions ; namely,

- (1.) Such of the provisions with respect to the construction of the railway and the works connected therewith, as relate to the correction of errors and omissions in plans, or to plans and sections of alterations.
- (2.) With respect to the temporary occupation of lands near the railway during the construction thereof :
- (3.) With respect to leasing the railway :

and subject to the following provisions ; namely,

- (1.) Nothing herein shall confer power for the taking or using of lands for deviation or for any other purpose, otherwise than by agreement :
- (2.) Any provision referring to the datum line described in the section approved of by Parliament shall be read as referring to the datum line described in the section approved of by the Board of Trade.

THE RAILWAY COMPANIES ACT, 1867.

30 & 31 VICT. CAP. 127.

An Act to amend the law relating to railway companies.

[20th August, 1867.]

* * * * *

PURCHASE OF LANDS.

36. Where after the passing of this Act a company exercise the powers conferred on the promoters of the undertaking by section eighty-five of the Lands Clauses Consolidation Act, 1845, the following provisions shall have effect.

Sect. 36.
Amend-
ment (as
to railway
com-
panies) of
section 85
of 8 & 9
Vict. c. 18.

- (1.) The surveyor to be appointed, as in that section provided, shall be appointed by the Board of Trade instead of by two justices, and all the provisions of that Act relative to a surveyor appointed by two justices shall apply to a surveyor so appointed by the Board of Trade.
- (2.) The company shall give not less than seven days' notice of their intention to apply to the Board of Trade for the appointment of a surveyor to any party interested in or entitled to sell and convey the lands in question, and not consenting to the entry of the company.
- (3.) The valuation to be made by the surveyor so appointed shall include the amount of compensation for all damage and injury to be sustained by reason of the exercise of the powers conferred by the said section, as far as such damage and injury are capable of estimation.

Sect. 36. (4.) The sureties to the bond to be given by the company under that section shall, in case the parties differ, instead of being approved by two justices, be approved of by the Board of Trade after hearing the parties.

The sureties are only required to be approved by the Board of Trade, in case the parties differ, and if no objection to them is made by the landowner, the bond will not be void by reason of their not being approved by the Board of Trade. *Loosemore v. Tiverton, &c., Railway Company*, 22 Ch. D. 25, 40 ; 9 A. C. 480.

A railway company cannot, since the above Act, enter under the provisions of section 85 of the Lands Clauses Act, 1845, without conforming to this section, and in a case where the valuation had been made prior to the passing of the Act, an entry subsequent to this Act was held wrongful. *Field v. Carnarvon and Llanberis Railway Company*, 5 Eq. 190.

THE REGULATION OF RAILWAYS ACT, 1868.

31 & 32 VICT. CAP. 119.

An Act to amend the law relating to railways.

[31st July, 1868.]

* * * * *

41. Whenever in the case of any lands purchased or taken otherwise than by agreement for the purposes of any public railway, any question of compensation in respect thereof, or any question of compensation in respect of lands injuriously affected by the execution of the works of any public railway, is under the provisions of "The Lands Clauses Consolidation Act, 1845," to be settled by the verdict of a jury empannelled and summoned as in that Act mentioned, the company or the party entitled to the compensation may, at any time before the issuing by the company [of a warrant(a)] to the sheriff as by that Act directed, apply to a judge of any one of the superior Courts of Common Law at Westminster, who shall, if he think fit, make an order for the trial of the question in one of the superior Courts, upon such terms and in such manner as to him shall seem fit; and the question between the parties shall be stated in an issue to be settled in case of difference by the judge, or as he shall direct, and such issue may be entered for trial and tried accordingly in the same manner as any issue joined in an ordinary action at such place as the judge shall direct; and the proceedings in respect of such issue shall be under and subject to the control and jurisdiction of the Court as in ordinary actions therein, but so, nevertheless, that the jury shall, where the issue relates to the value of lands to be purchased and also to compensation claimed for injury done or to be done to lands held therewith, deliver their verdict separately in manner provided by the

Sect. 41.

Company may apply to common law judge at Westminster to hear cases of compensation under 8 & 9 Vict. c. 18.

Sect. 41. forty-ninth section of "The Lands Clauses Consolidation Act, 1845." (b)

(a) These words in brackets are not in the Act and have apparently been omitted inadvertently. See section 39 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 85, and see per GROVE, J., in *Tanner v. Swindon Railway Company*, 45 L. T. 209.

(b) *Ante*, p. 94.

The judge of the High Court with a jury has no power to try any question of the claimant's right to compensation under this section. The power given by this section only enables the very same question, which could previously have been tried by a sheriff and a jury, to be tried by a judge of the superior Court with a jury of the superior Court. They can only find the amount of the compensation. See section 23 of the Lands Clauses Act, 1845, note "The same shall be so settled," *ante*, p. 57. The verdict and judgment so arrived at by the judge and jury is not a judgment of the High Court under its general jurisdiction, but a judgment arrived at under the limited jurisdiction given by the Lands Clauses Act as modified by this Act. The judgment can only be carried out, therefore, by bringing an action on it in the ordinary way. In *re East London Railway Company, Oliver's Claim*, 24 Q. B. D. 507. The Court of Appeal in that case also indicated an opinion that, notwithstanding the Judicature Acts and rules, a trial in the High Court under this section cannot be by a judge without a jury. On similar grounds, the High Court cannot order a new trial of an issue which has been directed under this section as the verdict and judgment of the Court are to have the same effect as the verdict and judgment of a sheriff and jury, which are final so long as they act within their jurisdiction. *Birmingham Land Company v. London and North Western Railway Company*, 22 Q. B. D. 435. In the case of *New River Company v. Midland Railway Company*, 36 L. T. (N.S.) 539, this point was not taken; the question there raised was whether the time for appealing from a verdict under this section was limited to twenty-one days, and by Order 58, rules 9 and 15, the Court held that it was not, but according to the principle laid down in the later cases above cited, no appeal lies.

Company
may obtain
judge's
order
instead of
issuing
warrant.

42. Whenever a company is called upon or liable under the provisions of the Lands Clauses Consolidation Act, 1845, to issue their warrant to the sheriff in the case of any disputed compensation, and the company shall obtain a judge's order as in the last preceding section mentioned, the obtaining of such an order and notice thereof to the opposite party shall be a satisfaction of the company's duty in respect of the issue of the warrant.

Where the landowner claims compensation under section 68 of the Lands Clauses Act, 1845, if the company desire to avail themselves of section 41 of this Act, they must not only take out the summons for an order under it within twenty-one days from receipt of the claim, but the

summons should be returnable so that the order can be made before the twenty-one days have expired, otherwise the claimant will be entitled to the amount claimed under section 68. *Tanner v. Swindon Railway Company*, 45 L. T. 209. **Sect. 42.**

43. The verdict of the jury and the judgment of the Court upon any issue authorised by this Act shall, as regards costs and every other matter incident to or consequent thereon, have the same operation and be entitled to the same effect as if that verdict and judgment had been the verdict of a jury and judgment of a sheriff upon an inquiry conducted upon a warrant to the sheriff issued by the company under the Lands Clauses Consolidation Act, 1845.(a)

(a) As to these costs, see sections 51—53, *ante*, pp. 100 *et seq.*

44. In so far as any expression used in any of the three preceding sections of this Act has any special meaning assigned to it by the Lands Clauses Consolidation Act, 1845, each such expression shall in this Act have the meaning so assigned to it. **Interpretation of certain expressions.**

45. *Wherever under the provisions of the Lands Clauses Consolidation Act, 1845, or of any Act incorporating, altering, or amending the same, the costs of any proceedings for determining a question of disputed compensation are settled by one of the masters of the Court of Queen's Bench in England or Ireland, it shall be lawful for such masters to receive and take in respect of each folio in length of every bill of costs so settled a fee of one shilling and no more: and such fee shall be taken in money and not in stamps, and may be retained by the said masters for their own use and benefit.* **Fees to masters for determining questions of disputed compensation.**

This section is repealed by the Lands Clauses (Taxation of Costs) Act, 1895, *post*, and see the Lands Clauses Act, 1860, p. 494.

* * * * *

THE LANDS CLAUSES CONSOLIDATION ACT, 1869.

32 & 33 VICT. CAP. 18.

An Act to amend the Lands Clauses Consolidation Act.

[24th June, 1869.]

[Whereas it is expedient that the provisions contained in "*The Lands Clauses Consolidation Act, 1845*," should be amended:

Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :]

The above has been repealed by the Statute Law Revision Act (No. 2), 1893 (56 & 57 Vict. c. 54).

Sect. 1. **1.** *Where in England under "The Lands Clauses Consolidation Act, 1845," or any Act incorporating the same, any question of disputed compensation is determined by arbitration, the costs of and incidental to the arbitration and award shall, if either party so requires, be taxed and settled as between the parties by any one of the taxing masters of the superior Courts of law ; and such fees may be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be demanded and taken in the offices of such masters, and all those enactments, including the enactments relating to the taking of fees by means of stamps, shall extend to the fees in respect of the said taxation.*

Costs of arbitrations, where either party so requires, to be settled by a master of superior courts.

This section, which amends section 34 of the Lands Clauses Act, 1845, *ante*, p. 73, has been repealed by the Lands Clauses (Taxation of Costs) Act, 1895, *post*, and in effect re-enacted thereby. A somewhat similar provision is made in the case of assessments by juries, by section 52 of the Lands Clauses Act, 1845, *ante*, p. 102. The Act of 1895 was passed because there was a difference between the systems for the payment of fees for taxing costs under these two sections. Fees under

section 52 and also under section 45 of the Regulation of Railways Act, 1868, *ante*, p. 493, were paid in cash, and under this section by stamps. The two systems are now assimilated, the system of payment by stamps being the one adopted. Sect. 1.

As the cases decided under this section will still be applicable they are here referred to.

A *mandamus* will lie to compel a master to tax the costs, if he refuse jurisdiction altogether. *Fitzhardinge v. Gloucester and Berkeley Canal Company*, L. R. 7 Q. B. 776; *Gray v. North Eastern Railway Company*, 1 Q. B. D. 696; *Sandback Trustees v. North Staffordshire Railway Company*, 3 Q. B. D. 1; *Metropolitan District Railway Company v. Sharpe*, 5 A. C. 425, p. 444. But if a master exercise his jurisdiction, although wrongly, a writ of *certiorari* will not issue to quash the taxation because the master has jurisdiction. *Sandback Trustees v. North Staffordshire Railway Company*, *supra*.

Nor has the Court jurisdiction to review the master's taxation because he is not acting as an officer of the Court, to whom the Court has delegated the office of taxing costs as in ordinary cases, but under this Act he is not acting as master but as a person designated by the Act. S. C., following the principle laid down in *Owen v. London and North Western Railway Company*, L. R. 3 Q. B. 54, a case under section 52 of the Lands Clauses Consolidation Act, 1845.

If the master allows costs to one of the parties where the statute does not give them, or disallows them where the statute gives them, the Court could probably interfere by *certiorari* or *mandamus*. *Owen v. London and North Western Railway Company*, *supra*.

This section does not apply to taxing the costs of arbitrations which embrace matters that could not be the subject of arbitration under the Lands Clauses Act, 1845, except by agreement, and it does not apparently apply to agreements entered into before the passing of this statute. *Doulton v. Metropolitan Board of Works*, L. R. 5 Q. B. 333. LUSH, J., in that case, said that this section "can only be taken to apply to arbitrations pure and simple begun and carried out under the Lands Clauses Acts." This must, however, be taken subject to the qualification laid down in *Metropolitan District Railway Company v. Sharpe*, 5 App. Cas. 425, that the arbitration clauses of the Lands Clauses Acts apply to arbitrations under special Acts, even where the special Act provides another method of arbitration, but otherwise incorporates the Lands Clauses Acts.

An action can be brought to recover the costs although the amount of such costs has not been previously ascertained by taxation, and an order for taxation on giving judgment for the plaintiff in such an action is valid. *Metropolitan District Railway Company v. Sharpe*, 5 A. C. 425.

In a case where after the arbitrators and umpire had been appointed, but before the award, the parties agreed that the promoters of the undertaking should have immediate possession, and that they should pay all the costs of the landowner of and incidental to the agreement, the reference, and the conveyance, including valuer's, surveyor's, and solicitor's charges, as between solicitor and client, it was held that the parties had contracted themselves out of the 1869 Act, but that the costs under the agreement might be taxed under the Attorneys and Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 38. *Wombwell v. Corporation of Barnsley*, 36 L. T. (N.S.) 708.

Section 2 of the Arbitration Act, 1889, incorporates into all submissions, unless a contrary intention is expressed, the provisions in

Sect. 1. Schedule I. Proviso (i) of that Schedule deals with costs, and enables the arbitrator to settle them, which he must do in the award. In case he does not, they will be liable to be taxed in the usual course. *In re Prebble and Robinson* [1892], 2 Q. B. 602. The arbitrator's own fees in such a case are liable to be taxed. S. C.

If the claimant, during arbitration proceedings under the Lands Clauses Acts, employs a person to act as solicitor who is not duly qualified, neither the person so acting nor the claimant can recover his costs and disbursements from the promoters, who would otherwise be liable, and it does not matter whether the claimant knew of the want of qualification or not, as the provision in the Attorneys and Solicitors Act, 1874 (37 & 38 Vict. c. 68), s. 12, is clear that no such costs or disbursements "shall be recoverable in any action, suit, or matter, by any person or persons whomsoever." The Court, therefore, in such a case, refused to make absolute a rule *nisi* obtained to compel the taxing master by a *mandamus* to tax the costs. *Fowler v. Monmouthshire Railway and Canal Company*, 4 Q. B. D. 335.

The master will not be compelled to tax the costs in a case where the claimant is not entitled to them, as, for example, in a case where the arbitrator has awarded less than the amount offered by the promoters. *Fitzhardinge v. Gloucester and Berkeley Canal Company*, L. R. 7 Q. B. 776.

Repeal of
31 & 32
Vict.
c. 119,
s. 33.

2. Section thirty-three of the Regulation of Railways Act, 1868, is hereby repealed, and any proceedings commenced in pursuance of that section may be continued under this Act as if they had been commenced under it.

This section has been repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39), but the repeal does not affect the repeal of section 33 of the Regulation of Railways Act, 1868.

Provision
respecting
lands in
West-
minster.

3. Where any lands by the special Act authorised to be taken are situate within the city and liberty of Westminster, then, with respect to those lands, in every case in which any question of disputed compensation is required by the Lands Clauses Consolidation Act, 1845, or any Act amending the same, to be determined by the verdict of a jury, the high bailiff of the city and liberty of Westminster, or his deputy, shall be deemed to be substituted for the sheriff throughout such of the enactments of the Lands Clauses Consolidation Act, 1845, and any Act amending the same as relate to the reference to a jury.

This section refers more particularly to sections 38—57 of the Lands Clauses Act, 1845. As to meaning of "sheriff" see sections 3, 39, and 40, *ante*, pp. 5, 85, and 88, and as to "deputy" see the cases in the note to section 39 of the Lands Clauses Act, 1845.

This enactment refers only to lands authorised to be taken, and would appear not to affect the case where the lands injuriously affected are within Westminster, but as to this see *R. v. Great Northern Railway Company*, 14 Q. B. 25. Sect. 3.

4. This Act may be cited as "the Lands Clauses Consolidation Act, 1869," and shall be construed as one with the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, and these Acts and this Act may be cited together as the Lands Clauses Consolidation Acts, 1845, 1860, and 1869. Short title.
Construction of
Acts.

By the Interpretation Act, 1889 (52 & 53 Vict. c. 43), s. 23, the expression "Lands Clauses Acts" in future Acts shall as regards England and Wales include the above Acts and the Lands Clauses (Umpire) Act, 1883, and the Lands Clauses (Taxation of Costs) Act, 1895, and any Acts for the time being in force amending the same.

THE GAS AND WATER WORKS FACILITIES ACT, 1870.

33 & 34 VICT. CAP. 70.

*An Act to facilitate in certain cases the obtaining of powers for
the construction of gas and waterworks and for the
supply of gas and water.* [9th August, 1870.]

This Act was passed in order to enable local authorities to obtain provisional orders to empower them to construct and maintain gas works and waterworks ; it is in part amended by the Gas and Water Works Facilities Act, 1870, Amendment Act, 1873 (36 & 37 Vict. c. 89), in respect of the procedure to obtain such orders.

The public general Acts dealing with gas works do not enable local authorities or gas companies to take land compulsorily for the purposes of constructing gas works. This Act provides as follows :—

Sect. 10. **10.** The provisions of the Lands Clauses Acts shall be incorporated with every Provisional Order under this Act, save where the same are expressly varied, or excepted by any such Provisional Order, and except as to the following provisions, namely—

Incorporation of general Acts in provisional order.

- (1.) With respect to the purchase and taking of lands otherwise than by agreement.
- (2.) With respect to the entry upon lands by the promoters of the undertaking.

Where a Provisional Order authorises a gas undertaking the provisions of "The Gasworks Clauses Act, 1847," shall be incorporated with such Provisional Order, save where the same are thereby expressly varied or excepted.

Where a Provisional Order authorises a water undertaking the provisions of "The Waterworks Clauses Act, 1847," and of "The Waterworks Clauses Act, 1863," shall be incorporated

with such Provisional Order, save where the same are thereby expressly varied or excepted. Sect. 10.

For the purposes of such incorporation a Provisional Order under this Act shall be deemed the special Act.

It will be seen that compulsory sections of the Lands Clauses Acts are expressly omitted in the above section.

The Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 6, allows undertakers to open and break up the soil and pavement of the several streets and bridges within the limits of the special Act in order to lay pipes, and they may in such streets do other acts necessary for the supplying of gas to the inhabitants "doing as little damage as may be in the execution of the powers hereby, or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers."

In regard to private property it is, however, enacted as follows :—

VII. Provided always, that nothing herein shall authorize or empower the undertakers to lay down or place any pipe or other works into, through, or against any building, or in any land not dedicated to public use, without the consent of the owners and occupiers thereof; except that the undertakers may at any time enter upon, and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down, or placed in pursuance of this or the special Act or any other Act of Parliament, and may repair or alter any pipe so laid down.

The Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), further amends both of the above Acts, and enables undertakers to sell superfluous land, and also enables persons under disabilities to convey easements and other such rights, but does not further incorporate the Lands Clauses Acts.

The material provisions are as follows :—

THE GASWORKS CLAUSES ACT, 1871.

1. The Gasworks Clauses Act, 1847, and this Act shall be construed together as one Act, and the provisions of this Act shall be held to repeal and supersede such of the provisions of that Act as are inconsistent with that Act. 10 & 11
Vict. c. 15
and this
Act to be
construed
together.

* * * * *

3. The provisions of this Act shall apply to every gas undertaking authorised by any special Act hereafter passed, or by any provisional order made under the authority of the Gas and Waterworks Facilities Act, 1870, save where the said provisions are expressly varied or excepted by any special Act or provisional order and every such Act and provisional order is in this Act, included in the term "the special Act." Applica-
tion of
Act.

* * * * *

6. The undertakers may sell and dispose of any lands which are vested in them, or which they are authorised to purchase, or which they may hereafter acquire, and which shall not be required for the purposes of the undertaking, and the provisions of "The Lands Clauses Con- Sale of
super-
fluous
lands.

Sect. 10. "Consolidation Act, 1845," ss. 128 to 132 (both sections inclusive), shall apply to any such sale; and the undertakers may also from time to time sell and dispose of any works, buildings, or erections on any lands belonging to them which shall not be required for the purposes of the undertaking.

* * * *

Under-takers not exempted from indictment. 9. Nothing in this or the special Act shall exonerate the undertakers from any indictment, action, or other proceeding for nuisance in the event of any nuisance being caused by them.

Power to take easements, &c., by agreement. 10. Persons empowered by "The Lands Clauses Consolidation Act, 1845," to sell and convey or release lands, may, if they think fit, subject to the provisions of that Act, and of "The Lands Clauses Consolidation Acts Amendment Act, 1860," grant to the undertakers any easement, right, or privilege, not being an easement of water, required for the purposes of the special Act, in, over, or affecting any such lands; and the provisions of the last mentioned Acts with respect to the lands and rentcharges, as far as the same are applicable in this behalf, shall extend and apply to such grants, or to such easements, rights, or privileges as aforesaid.

* * * *

Damage caused to private property during the construction of gas-works and laying of pipes, therefore, gives rise to a cause of action, and not to a claim for compensation inasmuch as the undertakers are not authorised to do any such damage.

Thus, where a gas company in laying pipes along a road which passed alongside premises, and over certain arches occupied as cellars, damaged these arches, the company was held, under section 7 of the Gasworks Clauses Act, to be liable to an action for damages: *Thompson v. Sunderland Gas Company*, 2 Ex. D. 429. A company will also be liable to be restrained by injunction from laying pipes in private land. *Maddock v. Wallasey Local Board*, 55 L. J. Q. B. 267.

As there are no provisions in the above mentioned Acts in regard to mines as in the Railways Clauses Act, 1845, ss. 77—85, *ante*, pp. 358—370, and in the Waterworks Clauses Act, 1847, ss. 18—27, *ante*, pp. 392—397, a difficulty has arisen as to the rights of mine owners who own mines beneath streets and highways. These rights were discussed in *Normanton Gas Company v. Pope*, 52 L. J. Q. B. 629. In that case the lessees of minerals under and adjacent to the highway, under which the company had laid pipes, had by working these minerals let down the soil and injured the pipes. It was held that the company was entitled to support for the pipes, and that the mine owner was entitled to compensation for the burden thus imposed upon him. The company were, therefore, entitled to recover damages in an action for the injury done to the pipes, while the owner of the minerals, it was held, could recover compensation, not by counterclaim in the action, but in an arbitration for the limitation put upon his user of the land. Such an arbitration might not be under the Lands Clauses Acts as the arbitration clauses need not be incorporated; but, in such a case, the arbitration might probably be conducted under the provisions of the Companies Clauses Act, 1845 (8 & 9 Vict. c. 16).

The general rule as to support in cases where there are no special statutory provisions was laid down in *In re Corporation of Dudley*, 8

Q. B. D. 86, and that rule was stated by *Fry, L.J.*, in the *Normanton Case, supra*, p. 636, thus :—"Where an obligation is created by statute to maintain something which requires support, or where there is a statutory duty to do something, the necessary result of doing which is that some structure will be required for which support is necessary, and where compensation is given for damage done in the exercise of the powers of the Act, then the Courts will, as a rule, hold that such a structure is entitled to support and that it cannot be interfered with by adjoining owners." Sect. 10.

See further as to support, the note to section 79 of the Railways Clauses Act, 1845, *ante*, p. 365, and see the notes to the Public Health Act Amendment Act, 1883, *post*.

As regards the construction of works for lighting by local authorities under the Public Health Act, 1875, or under any general or local Act or provisional order, the mining clauses of the Waterworks Clauses Act, 1847, ss. 18—27, are now to be deemed incorporated. See the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883 (46 & 47 Vict. c. 37), *post*.

THE ELEMENTARY EDUCATION ACT, 1870.

33 & 34 VICT. CAP. 75.

An Act to provide for public elementary education in England and Wales. [9th August, 1870.]

* * * * *

The definition clause of this Act (section 3), contains *inter alia* the following :—

Sect. 3.
Defini-
tion
of terms.

3. In this Act—

The term “Education Department” means “the Lords of the Committee of the Privy Council on Education: (a)

The term “managers” includes all persons who have the management of any elementary school, whether the legal interest in the school-house is or is not vested in them :

The term “elementary school” means a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction, from each scholar, exceed ninepence a week :

The term “school-house” includes the teacher’s dwelling-house, and the playground (if any), and the offices and all premises belonging to or required for a school.

(a) The definition in the Interpretation Act, 1889, is practically the same and it takes the place of the above definition.

* * * * *

Powers of
school
board for
providing
schools.

19. Every school board for the purpose of providing sufficient public school accommodation for their district, whether in obedience to any requisition or not, may provide,

by building or otherwise, school-houses properly fitted up, **Sect. 19.** and improve, enlarge, and fit up any school-house provided by them, and supply school apparatus and everything necessary for the efficiency of the schools provided by them, and purchase and take on lease any land, and any right over land, or may exercise any of such powers.

20. With respect to the purchase of land by school boards **Compul-** for the purposes of this Act, the following provisions shall **sory pur-** have effect ; (that is to say,) **chase of** **sites.**

(1.) The Lands Clauses Consolidation Act, 1845, and the **Regula-** Acts amending the same, shall be incorporated with **tions as** this Act, except the provisions relating to access to **to the** the special Act ; and in construing those Acts for **purchase** the purposes of this section the special Act shall be **of land** construed to mean this Act, and the promoters of **compul-** the undertaking shall be construed to mean the **sorily.** school board, and land shall be construed to include any right over land :

(2.) The school board, before putting in force any of the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, shall,—

(a.) Publish, during three consecutive weeks in **Publica-** the months of October and November, or **tion of** either of them, a notice describing shortly **notices.** the object for which the land is proposed to be taken, naming a place where a plan of the land proposed to be taken may be seen at all reasonable hours, and stating the quantity of land that they require ; and shall further,

(b.) After such publication, serve a notice in **Service of** manner mentioned in this section on every **notices.** owner or reputed owner, lessee or reputed lessee, and occupier of such land, defining

Sect. 20.

in each case the particular land intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such land ;

(c.) Such notice shall be served—

(a.) By delivery of the same personally on the person required to be served, or, if such person is absent abroad, to his agent ; or

(b.) By leaving the same at the usual or last known place of abode of such person as aforesaid, or by forwarding the same by post in a registered letter, addressed to the usual or last known place of abode of such person.

Petition to
Education
Depart-
ment.

(3.) Upon compliance with the provisions contained in this section with respect to notices, the school board may, if they think fit, present a petition under their seal to the Education Department, praying that an order may be made authorising the school board to put in force the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, so far as regards the land therein mentioned ; the petition shall state the land intended to be taken and the purposes for which it is required, and the names of the owners, lessees, and occupiers of land who have assented, dissented, or are neuter in respect of the taking of such land, or who have returned no answer to the notice, and shall be supported by such evidence as the Education Department may from time to time require.

(4.) If, on consideration of the petition and proof of the publication and service of the proper notices, the Education Department think fit to proceed with the case, they may, if they think fit, appoint some person to inquire in the district in which the land

is situate respecting the propriety of the proposed order, and also direct such person to hold a public inquiry. Sect. 20.

- (5.) After such consideration and proof, and after receiving a report made upon any such inquiry, the Education Department may make the order prayed for, authorising the school board to put in force, with reference to the land referred to in such order, the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as they may think fit, and it shall be the duty of the school board to serve a copy of any order so made in the manner and upon the persons in which and upon whom notices in respect of the land to which the order relates are required by this Act to be served.
- (6.) No order so made shall be of any validity unless the same has been confirmed by Act of Parliament ; and it shall be lawful for the Education Department, as soon as conveniently may be, to obtain such confirmation, and the Act confirming such order shall be deemed to be a public general Act of Parliament. No order valid until confirmed by parliament.
- (7.) The Education Department, in case of their refusing or modifying such order, may make such order as they think fit for the allowance of the costs, charges, and expenses of any person whose land is proposed to be taken of and incident to such application and inquiry respectively.
- (8.) All costs, charges, and expenses incurred by the Education Department in relation to any order under this section shall, to such amount as the Commissioners of Her Majesty's Treasury think proper to direct, and all costs, charges, and expenses of any person which shall be so allowed by the Education Depart- Costs, how to be defrayed.

Sect. 20.

ment as aforesaid, shall become a charge upon the school fund of the district to which such order relates, and be repaid to the [said Commissioners of Her Majesty's](a) Treasury or to such person respectively, by annual instalments not exceeding five, together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such direction of the said commissioners, or allowance of such costs, charges, and expenses respectively upon so much of the principal sum due in respect of the said costs, charges, and expenses as may from time to time remain unpaid.

The School Sites Acts [as defined in the fourth schedule](a) to this Act shall apply in the same manner as if the school board were trustees or managers of a school within the meaning of those Acts, and land may be acquired under any of the Acts mentioned in this section, or partly under one and partly under another Act.

(a) These words have been repealed by the Statute Law Revision Act, 1893.

"The Purchase of Land by School Boards."—Besides the powers and provisions in the Lands Clauses Act, the Tithe Act, 1878 (41 & 42 Vict. c. 42), provides that when land which is charged with rentcharge in lieu of tithes is taken for the erection of any school under the Elementary Education Act the rentcharge shall be redeemed in the manner therein provided. Section 1, see *post*, p. 524.

In order to take land compulsorily, a provisional order must be obtained, which order must be confirmed by Act of Parliament. Similar provisions will be found in most recent Acts which enable local authorities to take lands for public purposes. See, for example, the Public Health Act, 1875, *post*, and the Housing of the Working Classes Act, 1890, *post*. The service of the notice on the owners prior to applying for a provisional order does not bind the local authority to take the land, nor has it in any way the effect of a notice to treat given under section 18 of the Lands Clauses Act, 1845, *ante*, p. 41. *Burgess v. Bristol Sanitary Authority*, 50 J. P. 455, a case under the similar proviso in the Public Health Act, 1875, and see *Corporation of Huddersfield v. Jacomb*, 10 Ch. 92.

A school board may interfere with ancient lights or other easements before purchasing the same, the proper remedy of the owner of the easement being to claim compensation under section 68 of the Lands Clauses Act, 1845, *ante*, p. 123. *Clark v. London School Board*, 9 Ch. 120; *London School Board v. Smith* (1895), W. N. 37, and see note to section 18 of the Lands Clauses Act, 1845, *ante*, p. 34.

"For the purposes of this Act."—The building of a certified industrial school within the meaning of the Industrial Schools Act, 1866, is one of the purposes of this Act, and a school board has the same powers for that purpose as for the purpose of providing sufficient school accommodation for their district. Section 28. Sect. 20.

It has been held that a school board may take land authorised to be taken for the purpose of exchanging it for land of another owner, the owner who was to receive this land having undertaken to form it into a public road, which would be advantageous to the school intended to be erected. *Rolls v. London School Board*, 27 Ch. D. 639; and see note to section 18 of the Lands Clauses Act, 1845, *ante*, p. 36.

"The Special Act."—By the Elementary Education Act of 1873, which amends the Act of 1870, which is the principal Act, it is provided by section 15 as follows:—

15. For the purpose of the purchase of land otherwise than by agreement under section 20 of the principal Act, the Act confirming an order of the Education Department for such purpose, together with the principal Act, shall be deemed to be the special Act.

"The School Sites Acts."—These Acts, which were mentioned in the fourth schedule to this Act, were:—

The School Sites Acts of 1841, 1844, 1849, and 1851, respectively: 4 & 5 Vict. c. 38; 7 & 8 Vict. c. 37; 12 & 13 Vict. c. 49; and 14 & 15 Vict. c. 24. As the schedule has been repealed, the Acts now referred to are those included under the heading of the School Sites Acts, as mentioned in the Short Titles Act, 1892 (55 Vict. c. 10), which, besides the above, includes also the School Sites Act, 1852 (15 & 16 Vict. c. 49). The principal of these is the School Sites Act, 1841, the object of which was to facilitate the conveyance of sites for schools, and for that purpose it enabled tenants-in-tail and for life to grant the fee of small portions of land upon certain conditions; various other persons under disability were also empowered to convey. The later Acts have slightly extended these powers.

21. For the purpose of the purchase by the managers of any public elementary school of a schoolhouse for such school, or a site for the same, "The Lands Clauses Consolidation Act, 1845," and the Acts amending the same (except so much as relates to the purchase of land otherwise than by agreement), shall be incorporated with this Act; and in construing those Acts for the purposes of this section the special Act shall be construed to mean this Act, and the promoters of the undertaking shall be construed to mean such managers, and land shall be construed to include any right over land. Purchase of land by managers of public elementary school.

The conveyance of any land so purchased may be in the form prescribed by the School Sites Acts, or any of them, with this modification, that the conveyance shall express that

Sect. 21. the land shall be held upon trust for the purposes of a public elementary school within the meaning of this Act, or some one of such purposes which may be specified, and for no other purpose whatever.

Land may be acquired under the Acts incorporated with this section, or under the School Sites Acts, or any of them, or partly under one and partly under another Act.

Any person desirous of establishing a public elementary school shall be deemed to be managers for the purpose of this section if they obtain the approval of the Education Department to the establishment of such school.

Sale or
lease of
school-
house.

22. The provisions of the Charitable Trusts Acts, 1853 to 1869, which relate to the sale, leasing, and exchange of lands belonging to any charity, (a) shall extend to the sale, leasing, and exchange of the whole or any part of any land or school-house belonging to a school board which may not be required by such board, with this modification, that the Education Department shall for the purposes of this section be deemed to be substituted in those Acts for the Charity Commissioners.

(a) These are 16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 23 & 24 Vict. c. 136; 25 & 26 Vict. c. 112; 32 & 33 Vict. c. 110; and 50 & 51 Vict. c. 49.

* * * * *

Constitu-
tion of
school
board.

30. With respect to the constitution of a school board the following provisions shall have effect:

- (1.) The school board shall be a body corporate, by the name of the school board of the district to which they belong, having a perpetual succession and a common seal, with power to acquire and hold land for the purposes of this Act without any license in mortmain:

* * * * *

THE PUBLIC HEALTH ACT, 1875.

38 & 39 VICT. CAP. 55.

An Act for consolidating and amending the Acts relating to public health in England. [11th August, 1875.]

* * * * *

The following sections deal with the purchase and taking of lands by local authorities under this Act. Some other public Acts provide for the taking of land by incorporating these sections of this Act, or some of them, as, for example:—The Housing of the Working Classes Act, 1890, Part III., s. 57; The Local Government Act, 1888, s. 65; and The Allotments Act, 1887, s. 3 (4).

Purchase of Lands.

175. Any local authority may, for the purposes and **Sect. 175.** subject to the provisions of this Act, purchase or take on lease, sell, or exchange any lands, whether situated within or without their district; they may also buy up any water-mill, dam, or weir which interferes with the proper drainage or the supply of water to their district. Power to purchase lands.

Any lands acquired by a local authority in pursuance of any powers in this Act contained, and not required for the purpose for which they were acquired, shall (unless the Local Government Board otherwise direct) be sold at the best price that can be gotten for the same, and the proceeds of such sale shall be applied towards discharge by means of a sinking fund or otherwise of any principal moneys which have been borrowed by such authority on the security of the fund or rate applicable by them for the general purposes of this Act, or if no such principal moneys are outstanding shall be carried to the account of such fund or rate.

"Any Local Authority."—By section 4, "local authority" means "urban sanitary authority and rural sanitary authority," and now, by section 21 of the Local Government Act, 1894 (56 & 57 Vict. c. 73), urban sanitary authorities shall be called urban district councils, and for every rural sanitary district there shall be a rural district council,

Sect. 175. which district council shall have all the powers of the rural sanitary authority in the district.

"Lands."—By section 4, "lands" and "premises" include messuages, buildings, lands, easements, and hereditaments of any tenure. The Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3, provides that in any Act passed after the year 1850 the expression "land" shall include messuages, tenements, and hereditaments, houses and buildings of any tenure. This latter definition omits the word "easements," which are, however, included in the word hereditaments. See section 3 of the Lands Clauses Act, 1845, note "Lands," *ante*, p. 7.

Mines.—Section 334 of this Act provides that nothing in this Act shall be construed to extend to mines so as to interfere with or obstruct the efficient working of the same; but in the case of *Re Corporation of Dudley*, 8 Q. B. D. 86, LINDLEY and BRETT, L.JJ., both expressed the opinion that section 334 only extended to nuisances: pp. 96, 97. In respect of support of sewers, pipes and other structures the Public Health Act (1875) (Support of Sewers) Amendment Act, 1883 (46 & 47 Vict. c. 37), *post*, incorporates the "mine" clauses of the Waterworks Clauses Act, 1847.

Tithes.—Provision is made for the redemption of tithes on land taken to be used for public purposes by the Tithe Act, 1878 (41 & 42 Vict. c. 42), ss. 1, 2, *post*, p. 524.

Soil under Streets.—Where the surface of land has been dedicated to the public for a street, the subsoil still remains the property of the landowner, and a local authority cannot erect a public convenience under a street without acquiring such subsoil (*Baird v. Tunbridge Wells Corporation* [1894], 2 Q. B. 867); and as to the meaning of street, see *Fareham Local Board v. Smith*, 7 "Times" L. R. 443; *Coverdale v. Charlton*, 4 Q. B. D. 104; *Rolls v. St. George-the-Martyr*, 14 Ch. D. 785; and *Wandsworth District Board of Works v. United Telephone Company*, 13 Q. B. D. 904. Water pipes may be laid down in a private road by a sanitary authority having the general control of the streets, making compensation afterwards for injury done under section 308. Section 57; and see *Hill v. Wallasey Local Board* [1894], 1 Ch. 133.

Superfluous Land.—See the notes to section 127 of the Lands Clauses Act, 1845, *ante*, p. 275. That section is expressly excepted in the case of lands taken compulsorily by section 176. Section 128 of the Lands Clauses Act, 1845, is not, however, excluded, which gives a right of pre-emption to the person from whose land they were severed and to adjoining owners. *Ante*, p. 282.

Where a corporation had acquired land compulsorily for the purpose of carrying out a public improvement, and they proposed to abandon that purpose and use the land for some other purpose, the Court granted an injunction to restrain them from so doing. *Attorney-General v. Corporation of Sunderland*, W. N. (1873) 174.

Solicitors' Costs.—Land purchased voluntarily under this Act is purchased in accordance with the Lands Clauses Act, and the exception in rule 11 of Schedule I., Part 1, of General Order under the Solicitors Remuneration Act, 1881, which excludes the scale in the case of purchases under the Lands Clauses Act, applies to purchases under this Act. The charges of the vendor's solicitor, which a local board had agreed to pay, were held not to be limited to the amount mentioned in the scale. *In re Burdekin* [1895], 2 Ch. 136.

176. With respect to the purchase of lands by a local authority for the purposes of this Act, the following regulations shall be observed ; (that is to say,) **Sect. 176.**
Regulations as to purchase of land.

(1.) The Lands Clauses Consolidation Acts, 1845, 1860, and 1869, shall be incorporated with this Act, except the provisions relating to access to the special Act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845.

(2.) The local authority, before putting in force any of the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, shall

Publish once at the least in each of three consecutive weeks in the month of November, in some local newspaper circulated in their district, an advertisement, describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of lands that they require ; and shall further

Serve a notice in the month of December on every owner or reputed owner, lessee or reputed lessee and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands.

(3.) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may, if they think fit, present a petition under their seal to the Local Government Board. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners, lessees, and occupiers of lands who have assented, dissented, or are neuter

Sect. 176.

in respect of the taking such lands, or who have returned no answer to the notice, it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands' Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires.

- (4.) On the receipt of such petition, and on due proof of the proper advertisements having been published and notices served, the Local Government Board shall take such petition into consideration, and may either dismiss the same, or direct a local inquiry as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners, lessees, and occupiers thereof.
- (5.) After the completion of such inquiry the Local Government Board may, by provisional order, empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served.

Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October or of October and November,

but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer shall not be held until the expiration of one month from the last day of the second of the two months in which the notices are given; and any notices or orders by this section required to be served on a number of persons having any right in, over, or on lands in common, may be served on any three or more of such persons on behalf of all such persons. Sect. 176.

"For the Purposes of this Act."—The principal purposes of this Act for which land may be required are, under Part III., to construct sewers (section 16), works for the disposal of sewage (section 27), public conveniences (section 39), waterworks (section 51), hospitals (section 131), and mortuaries (section 141) and, under Part IV., to widen and enlarge streets and to make new streets (section 154), to provide public pleasure grounds, market places, and market houses (section 166), and slaughter-houses. Power is also given to construct a cemetery by the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31).

The powers as to the construction of public conveniences and waterworks, and the powers to do the work under Part IV., mentioned above, were given to urban sanitary authorities, now urban district councils. These bodies are also given, by section 144, the powers of the highway authorities under the Highway Act, 1835 (5 & 6 Will. 4, c. 50). See Appendix. The powers of the Open Spaces Acts, 1877, 1890, are also given to urban sanitary authorities and certain rural sanitary authorities. See the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), s. 5.

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 25 (1), in rural districts the powers as regards highways are transferred to the rural district council, and by sub-section (5) of the same section, rural district councils may have such of the powers of urban districts as the Local Government Board may by general order direct. As to the powers of parish councils to acquire land, see sections 9 and 10 of the Local Government Act, 1894, *post*.

Sub-section (1).—With the Lands Clauses Acts here mentioned are to be read the Lands Clauses (Umpire) Act, 1883 (46 & 47 Vict. c. 15), *post*, and the Lands Clauses (Taxation of Costs) Act, 1895 (57 & 58 Vict. c. 11), *post*.

Section 127 deals with the sale of superfluous land, *ante*, p. 275, as to the sale of which see last section. As to what is the special Act, and who are the promoters of the undertaking, see section 316, *post*, p. 523.

District councils taking land under this section for public improvements will have to make good the deficiencies in the poor's rate and land tax under section 133 of the Lands Clauses Act, 1845, *ante*, p. 287. *Governors of Poor of Bristol v. Mayor of Bristol*, 18 Q. B. D. 549.

Sub-section (2).—*Serve a Notice.*—As to service, see section 267, *post*, and as to service on commoners, see proviso to this section.

The service of a notice under this section does not bind the local

Sect. 176. authority to take the land, although the provisional order may be confirmed. *Burges v. Urban Sanitary Authority of Bristol*, 50 J. P. 455.

"Owner."—By section 4, "owner" means the person for the time being receiving the rack rents of the lands or premises in connection with which the word is used, whether on his own account, or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack rent. After the provisional order is passed, the word "owner" will have the meaning given to it in the Lands Clauses Consolidation Act, 1845, s. 3, *ante*, p. 6, namely, the person entitled to sell and convey. Probably such owner ought to be served with the notice under this section.

Provisional Order.—The provisions relating to inquiries by the Local Government Board will be found in sections 293—296, and to granting provisional orders in sections 297, 298.

As to extending the time limited for compulsory purchase by a second Act or provisional order, see *Bentley v. Rotherham and Kimberworth Local Board*, 4 Ch. D. 588.

Power to let lands.

177. Any local authority may, with the consent of the Local Government Board, let for any term any lands which they may possess, as and when they can conveniently spare the same.

Provision for lands belonging to the Duchy of Lancaster.

178. The Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit, (but subject and without prejudice to the rights of any lessee, tenant, or occupier,) from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and Council may appear sufficient consideration, the whole or any part of any lands belonging to Her Majesty, Her heirs or successors in right of the said Duchy, or any right, interest, or easement, in, through, over, or on, any such lands which, for the purposes of this Act, such local authority from time to time deem it expedient to purchase; and on payment of the purchase money, as provided by the Duchy of Lancaster Lands Act, 1855, (a) the said Chancellor and Council may grant and assure to the said authority, under the seal of the said Duchy, in the name of Her Majesty, Her heirs or successors, the subject of such contract or sale, and such money shall be dealt with as if such subject had been

sold under the authority of the Duchy of Lancaster Lands Sect. 178. Act, 1855.

(a) 18 & 19 Vict. c. 58.

Arbitration.

179. In case of dispute as to the amount of any compensation to be made under the provisions of this Act (except where the mode of determining the same is specially provided for), (a) and in case of any matter which by this Act is authorised or directed to be settled by arbitration, then, unless both parties concur in the appointment of a single arbitrator, each party shall appoint an arbitrator to whom the matter shall be referred.

Mode of
reference
to arbitra-
tion.

(a) Where lands have been taken compulsorily, the compensation is not settled under the arbitration clauses of this Act, but is to be settled according to the provisions of the Lands Clauses Act which are incorporated by section 176. *Ex parte Rayner*, 3 Q. B. D. 446. If lands are injuriously affected by reason of work done under a provisional order made pursuant to section 176, which incorporates section 68, the compensation for such injurious affection ought probably to be settled under the Lands Clauses Acts. In the case of injury done to lands under the other powers of this Act, as in laying sewers or levelling streets, the compensation should be settled under the arbitration clauses of this Act. See section 308, *post*.

In some local Acts provision has been made that compensation for injury to land should be settled by arbitration in the manner provided by the Public Health Act, 1875. See, for example, the Ascot District Gas Act, 1882 (45 & 46 Vict. c. cxlii.), s. 26, referred to in *In re Mackenzie and the Ascot Gas Company*, 17 Q. B. D. 114.

180. With respect to arbitrations under this Act, the following regulations shall be observed ; (that is to say,) Regula-
tions as to
arbitra-
tion.

(1.) Every appointment of an arbitrator under this Act when made on behalf of the local authority, shall be under their common seal, and on behalf of any party under his hand, or if such party be a corporation aggregate, under their common seal :

(2.) Every such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same :

- Sect. 180.** (3.) After the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation :
- (4.) If for the space of fourteen days after any matter by this Act authorised or directed to be settled by arbitration has arisen, and notice in writing by one party who has duly appointed an arbitrator has been given to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fails to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties :
- (5.) If before the determination of any matter so referred any arbitrator dies, or refuses, or becomes incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead ; and if such party fails so to do for the space of seven days after notice in writing from the other party in that behalf, the remaining arbitrator may proceed *ex parte* ; and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made :
- (6.) If a single arbitrator dies or becomes incapable to act before the making of his award, or fails to make his award within twenty-one days after his appointment, or within such extended time, if any, as may have been duly appointed by him for that purpose, the matters referred to him shall be again referred to arbitration under the provisions of this Act, as if no former reference had been made :
- (7.) Where there is more than one arbitrator, the arbitrator shall, before they enter on the reference, appoint,

by writing under their hands, an umpire, and if the person appointed to be umpire dies or becomes incapable to act, the arbitrators shall forthwith appoint another person in his stead ; and if the arbitrators neglect or refuse to appoint an umpire for seven days after being requested so to do by any party to the arbitration, the Local Government Board shall, on the application of any such party, appoint an umpire : Sect. 180.

- (8.) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been duly appointed by them for that purpose, the matters referred shall be determined by the umpire :
- (9.) The time for making an award by arbitrators under this Act shall not in any case be extended beyond the period of two months from the date of the submission, and the time for making an award by an umpire under this Act shall not in any case be extended beyond the period of two months from the date of the reference of the matters to him :
- (10.) Before any arbitrator or umpire enters on a reference under this Act, he shall make and subscribe the following declaration before a justice of the peace ; (that is to say,)

“ I, *A. B.*, do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the Public Health Act, 1875.

“ *A. B.*”

- (11.) Such declaration shall be annexed to the award when made ; and any arbitrator or umpire who wilfully acts contrary to such declaration shall be guilty of a misdemeanor :

- Sect. 180.** (12.) Any arbitrator, arbitrators, or umpire, appointed by virtue of this Act may require the production of such documents in the possession or power of either party as they or he may think necessary for determining the matters referred, and may examine the parties or their witnesses on oath :
- (13.) The costs of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators, or (in case the matters referred are determined by an umpire) of the umpire :
- (14.) Any submission to arbitration under the provisions of this Act may be made a rule of any of the superior courts, on the application of any party thereto :
- (15.) The award of arbitrators or of an umpire under this Act shall be final and binding on all parties to the reference.

Compare the somewhat similar provisions as to arbitrator in the Lands Clauses Act, 1845, ss. 23, 25—37, and the notes thereto, and *ante*, pp. 56, 61—83 ; and see also the Arbitration Act, 1889, *post*.

In cases where the compensation is to be assessed under this Act, the provisions must be strictly followed. Thus it has been held that the Court cannot enlarge the time for making an award beyond the period limited by this section. *In Re Muckenzie and the Ascot Gas Company*, 17 Q. B. D. 114, and *cf.*, section 23 of the Lands Clauses Act, 1845, *ante*, p. 56, and note, p. 58, and see *Tranmere Local Board v. Kellett*, 11 L. T. (N.S.) 457. An award has also been held invalid where the claimant appointed an arbitrator, but not in writing under his hand as provided in sub-section (1). *In re Gifford and Bury Town Council*, 20 Q. B. D. 368. An award will be set aside if made too late, and the time that the umpire has for making the award is to be calculated from the date when the arbitrators disagreed, and not from the date when their powers expired. *In re Yeadon Local Board and Yeadon Waterworks Company*, 41 Ch. D. 52.

Claims under twenty pounds may be referred to court of summary jurisdiction.

181. All questions referable to arbitration under this Act may, where the amount in dispute is less than twenty pounds, be determined at the option of either party before a court of summary jurisdiction, but the court may, if it thinks fit, require that any work in respect of which the claim of the local authority is made and the particulars of the claim be

reported on to them by any competent surveyor, not being **Sect. 181.**
the surveyor of the local authority; and the court may
determine the amount of costs incurred in that behalf, and
by whom such costs or any part of them shall be paid.

* * * * *

267. Notices, orders, and any other documents required **Service of notices.**
or authorised to be served under this Act, may be served by
delivering the same to or at the residence of the person to
whom they are respectively addressed, or where addressed
to the owner or occupier of premises by delivering the same
or a true copy thereof, to some person on the premises, or if
there is no person on the premises who can be so served by
fixing the same on some conspicuous part of the premises;
they may also be served by post by a prepaid letter, and if
served by post shall be deemed to have been served at the
time when the letter containing the same would be delivered
in the ordinary course of post, and in proving such service it
shall be sufficient to prove that the notice, order or other
document was properly addressed and put into the post.

Any notice by this Act required to be given to the owner
or occupier of any premises may be addressed by the
description of the "owner" or "occupier" of the premises
(naming them) in respect of which the notice is given without
further name or description.

The service of the notice to treat is regulated by sections 19 and 20 of
the Lands Clauses Act, 1845, *ante*, pp. 49, 50.

* * * * *

305. Whenever it becomes necessary for a local authority **Entry on lands for purposes of Act.**
or any of their officers to enter, examine, or lay open any
lands or premises for the purpose of making plans, surveying,
measuring, taking levels, making, keeping in repair or
examining works, ascertaining the course of sewers or drains,
or ascertaining or fixing boundaries, and the owner or
occupier of such lands or premises, refuses to permit the
same to be entered upon examined or laid open for the pur-

Sect. 305. poses aforesaid or any of them, the local authority may, after written notice to such owner or occupier, apply to a court of summary jurisdiction for an order authorising the local authority to enter, examine and lay open the said lands and premises for the purposes aforesaid or any of them.

If no sufficient cause is shown against the application, the Court may make an order accordingly, and on such order being made the local authority or any of their officers may, at all reasonable times between the hours of nine in the forenoon, and six in the afternoon, enter, examine or lay open the lands or premises mentioned in such order, for such of the said purposes as are therein specified, without being subject to any action or molestation for so doing. Provided that, except in case of emergency, no entry shall be made or works commenced under this section unless at least twenty-four hours' notice of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered.

The local authority have other powers of entering upon land than those given under this section, (see sections 41, 58, 98 and 102), and in these cases no order of a court of summary jurisdiction is required. *Lamacraft v. St. Thomas Rural Sanitary Authority*, 42 L. T. (N.S.) 365. Justices have no power to state a case on refusing to make an order under this section. *Diss Urban Sanitary Authority v. Aldrich*, 2 Q. B. D. 179.

* * * * *

Compensation in case of damage by local authority.

308. Where any person sustains any damage by reason of the exercise of any of the powers of this Act, in relation to any matter as to which he is not himself in default, full compensation shall be made to such person by the local authority exercising such powers; and any dispute as to the fact of damage or amount of compensation shall be settled by arbitration in manner provided by this Act, or if the compensation claimed, does not exceed the sum of twenty pounds, the same may at the option of either party be ascertained by and recovered before a court of summary jurisdiction.

"Where any person sustains any damage."—If any damage is done to land by reason of the exercise of the powers of this Act, the

principles of compensation laid down in cases under the Lands Clauses Act will apply. *Hall v. Mayor of Bristol*, L. R. 2 C. P. 322. Sect. 308.

If the powers of the Act are exercised in a negligent manner and damage result, the remedy will be by action. *Fairbrother v. Bury Rural Sanitary Authority*, 37 W. R. 544. *Cox v. Paddington Vestry*, 64 L. T. (N.S.) 566; *Uttley v. Local Board of Todmorden*, 44 L. J. C. P. 19; *Reg. v. Darlington Local Board*, 35 L. J. Q. B. 45. An action will also lie against a local authority for creating a nuisance. *Sellers v. Matlock Bath Local Board*, 14 Q. B. D. 928.

It does not appear to have been decided whether the damage referred to in this Act means damage to land and interests in land as under the Lands Clauses Act, or whether if a person received an injury from the exercise of the powers of the Act other than to his land, he would be entitled to compensation if such injury apart from the statute would have been actionable.

"Full Compensation shall be made."—The principles of compensation when land is taken will be found in the notes to section 63 of the Lands Clauses Act, 1845, *ante*, p. 111, and in the case of lands injuriously affected in the notes to section 68, *ante*, p. 129.

It is proposed here to refer merely to those cases where compensation has been awarded in respect of damages caused by the exercise of the powers of sanitary authorities.

Compensation for Land taken.—Where land is taken the compensation will by section 176 be determined according to the Lands Clauses Acts.

Where part of an owner's land was taken for sewage works, it was held that he was entitled to recover compensation for the injurious affection of the rest of his land by reason of the depreciation caused thereto for building purposes, by reason of the construction and use of such sewage works. *Cowper Essex v. Acton Local Board*, 14 A. C. 153.

Compensation for Injurious Affection—Sewers.—By section 16 local authorities are allowed to lay and carry sewers under and across any street, road, or under any lands whatsoever within their district. They have power to do this upon making compensation, but it is not necessary that they should previously purchase the land. Thus they may carry a sewer across pleasure grounds belonging to a private individual, and on such a level that the bottom of the sewer would only be slightly below the surface, and a permanent embankment would require to be made. They may do so without previously buying the land, but they must subsequently make compensation. *Roderick v. Aston Local Board*, 5 Ch. D. 328. Similarly a local authority may make manholes through the land of a private owner without previously purchasing the land, such manholes being part of the sewer. *Swanston v. Twickenham Local Board*, 11 Ch. D. 838. If the road is a private road, compensation could probably be claimed for the removal of the subsoil. *Taylor v. Oldham Corporation*, 4 Ch. D. 395, per JESSEL, p. 409, and see *Farmer v. Waterloo and City Railway Company* [1895], 1 Ch. 527.

Injury to houses by the making of a sewer which would not have given rise to a cause of action gives no right to compensation. *Hall v. Mayor of Bristol*, L. R. 2 C. P. 322. But the impossibility of building over a sewer, the annoyance likely to arise from the opening of manholes, and from stench caused thereby, and the possible defective construction of the sewer, are subjects which may be properly considered

Sect. 308. in assessing the compensation. *Uttley v. Todmorden Local Board*, 41 L. J. C. P. 19.

Probably also the fact that support adjacent and subjacent is required for the sewers should be taken into account in assessing the compensation. *Roderick v. Aston Local Board*, 5 Ch. D. 328, 333; *In re Corporation of Dudley*, 8 Q. B. D. 86, and see *Normanton Gas Company v. Pope*, 52 L. J. Q. B. 629. In the case of mines, however, see the Public Health (Support of Sewers) Act, 1883, *post*. Where a local authority lay water pipes along a private road, which they may do if they have the general control of the streets, they must make compensation to the owner. *Hill v. Wallasey Local Board* (1894), 1 Ch. 133.

Making and altering Roads.—Altering the level of streets whereby the access to premises is obstructed so that the value of the land is affected is clearly a subject for compensation. See *ante*, p. 137.

Thus, if a local authority in paving and levelling a street alter the level so that the access to the house is rendered dangerous and difficult, they must pay compensation even although the owner may be liable to pay a proportion of the expenses of such paving and levelling. *Reg. v. Wallasey Local Board*, L. R. 4 Q. B. 351; and see *Nutter v. Accrington Local Board*, 4 Q. B. D. 375. If, however, the alteration in the level of the road is made by a local authority under the powers of the Highway Act, 1835 (5 & 6 Will. 4, c. 50) (see Appendix), which powers are transferred to urban sanitary authorities by this Act (section 144), owners cannot recover compensation under the Public Health Act, as section 308 provides only for compensation in respect of the exercise of any of the powers of that Act. *Burgess v. Northwich Local Board*, 6 Q. B. D. 264; and see *Graham v. Mayor of Newcastle* (1893), 1 Q. B. 643. But if the Local Board act not only as highway authorities, but under the Public Health Act, they must pay compensation under this section. *Brierley Hill Local Board v. Pearsall*, 9 A. C. 595, and see per *BOWEN, L.J.*, 11 Q. B. D. 735, 737.

Where the owner of an inn had land in front of it abutting on and open to the highway and on a level with it, and a local authority placed kerbstones and made a footpath leaving convenient access to the premises, the owner was refused a mandatory injunction directing the removal of the kerbstones, his remedy, if any, being to obtain compensation. *Sellors v. Matlock Bath Local Board*, 14 Q. B. D. 928.

"Arbitration in manner provided by this Act."—As the compensation is to be settled as in manner provided by this Act (sections 179—181, *ante*), the landowner has not the option of a jury as under section 68 of the Lands Clauses Act, 1845, *ante*, p. 123. The compensation in respect of the purchase of land will be settled as provided in section 176 according to the Lands Clauses Acts, and probably if land is injuriously affected by reason of the exercise of powers given under a Provisional Order which incorporates section 68 of the Lands Clauses Act, the compensation will be assessable under that Act. *Ex parte Rayner*, 3 Q. B. D. 446.

It is "the fact of damage," and "the amount of compensation," that is to be settled by the arbitrators under this Act. The jurisdiction of the arbitrator is, therefore, as under the Land Clauses Acts conferred to settling the amount, and he has no power to enquire into the legal title of the claimant, or to his right to compensation. Similarly, if a local

board desires to contest the right of any person to compensation, they cannot do so until after the amount has been settled. They can then contest the matter in an action brought upon the award. *Pearsall v. Beierley Hill Local Board*, 9 A. C. 595; the cases of *Reg. v. Metropolitan Commissioners of Sewers*, 1 E. & B. 694; *Reg. v. Burslem Local Board*, 1 E. & E. 1077, and *Bradley v. Southampton Local Board*, 4 E. & B. 1014, to the contrary, although under different statutes were not approved. Sect. 308.

* * * * *

316. In the construction of the provisions of any Act incorporated with this Act the term "the special Act" includes this Act, and, in the case of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, any order confirmed by Parliament and authorising the purchase of lands otherwise than by agreement under this Act, the term "the limits of the special Act" means the limits of the district; and the urban or rural authority shall be deemed to be "the promoters of the undertaking," "the commissioners," or the "undertakers," as the case may be. As to construction of incorporated Acts.

All penalties incurred under the provisions of any Act incorporated with this Act shall be recovered and applied in the same way as penalties incurred under this Act.

* * * * *

332. Nothing in this Act shall be construed to authorise any local authority to injuriously affect any reservoir, canal, river, stream, or the feeders thereof, or the supply, quality, or fall of water contained in any reservoir, canal, river, or stream, or in the feeders thereof, in cases where any body of persons or person would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir, canal, river, stream, feeders, or such supply, quality or fall of water, unless the local authority first obtain the consent in writing of the body of persons or person so entitled as aforesaid. Saving for water rights generally.

* * * * *

THE TITHE ACT, 1878.

41 & 42 VICT. CAP. 42.

An Act to amend and further extend the Acts for the commutation of tithes in England and Wales.

[8th August, 1878.]

6 & 7
Will. 4,
c. 71.

7 Will. 4
& 1 Vict.
c. 69.

1 & 2 Vict.
c. 64.

2 & 3 Vict.
c. 62.

3 & 4 Vict.
c. 15.

5 & 6 Vict.
c. 54.

9 & 10
Vict. c. 73.

23 & 24
Vict. c. 93.

WHEREAS an Act was passed in the session of Parliament held in the sixth and seventh years of the reign of His late Majesty, King William the Fourth, intituled "An Act for the commutation of tithes in England and Wales," and the said Act has been amended, and the provisions thereof have been extended, by Acts passed in the sessions of Parliament held respectively in the first year, the first and second years, the second and third years, the third year, the fifth and sixth years, the ninth and tenth years, and the twenty-third and twenty-fourth years of the reign of Her present Majesty :

And whereas it is expedient that the said Acts should be amended, and that the provisions thereof should be further extended in manner hereinafter mentioned :

Be it, therefore, enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows :

Sect. 1.
Redemption
of
tithe on
land re-
quired for
public pur-
poses.

1. In all cases where land charged with rentcharge in lieu of tithes^(a) is taken for any of the following purposes ; (that is to say,)

The building of any church, chapel, or other place of public worship ;

- The making of any cemetery or other place of burial ; **Sect. 1.**
- The erection of any school under the Elementary Education Act ;(b) **33 & 34 Vict. c. 75.**
- The erection of any town hall, court of assize, gaol, lunatic asylum, hospital, or any other building used for public purposes, or in the carrying out of any improvements under the Artizans Dwellings Act, 1875 ;(c) **38 & 39 Vict. c. 36.**
- The formation of any sewage farm under the provisions of the sanitary Acts, or the construction of any sewers or sewage works, or any gas or water works ;
- Or the enlarging and improving of the premises or buildings occupied or used for any of the above-mentioned purposes ;

the person or persons proposing to carrying out the above-mentioned works, buildings, or improvements shall, as soon as the said person or persons are in possession of the land, and before the land is applied to any of the purposes aforesaid, apply to the Tithe Commissioners(d) to order the redemption of the rentcharge for a sum of money equal to twenty-five times the amount thereof ; and the redemption money, with the expenses incident to the redemption, shall be paid to the said commissioners within a time to be fixed by such order, or within any enlarged time the commissioners may appoint, and the commissioners shall apply such redemption money in the manner provided by the said Acts.

(a) By the Tithe Rentcharge Redemption Act, 1885 (48 & 49 Vict. c. 32), s. 2, the provisions of this and the other recited Acts are extended to "all corn rents, rentcharges, and money payments, payable out of or charged on any lands by virtue of any Act of Parliament in lieu of tithes."

(b) For provisions of that Act as to acquisition of land, see *ante*, p. 502.

(c) The Artizans Dwellings Act, 1875, has been repealed and in effect re-enacted by the Housing of the Working Classes Act, 1890, *post*.

(d) The powers and duties of the commissioners under the Tithe Acts

Sect. 1. was transferred to the Board of Agriculture by the Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), s. 2.

As to compensation for tithes generally, see Lands Clauses Consolidation Act, 1845, s. 68, note "Tithes," *ante*, p. 140.

Applica-
tion for
redemp-
tion.

2. The application to the said commissioners in respect of any such land may be signed by the secretary of any company which shall have taken the land, or in the case of a corporation, school, or other board, by the clerk of the said board or corporation, and in every other case by such person or persons as the commissioners may require.

* * * *

THE CUSTOMS BUILDINGS ACT, 1879.

42 & 43 VICT. CAP. 36.

An Act for the transfer of property held for the service of Her Majesty's Customs to the commissioners of Her Majesty's works and public buildings ; and for other purposes.

[11th August, 1879.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as the Customs Buildings Act, 1879. **Sect. 1.**
Short title.

2. All lands and hereditaments of freehold or leasehold tenure in Great Britain, the Isle of Man, and the Channel Islands, which are now vested in the Secretary to the Commissioners of Her Majesty's Customs (hereinafter called the Commissioners of Customs), or any other person in trust for the same commissioners or for the service of Her Majesty's Customs, shall become and are hereby vested in the Commissioners of Her Majesty's Works and Public Buildings (hereinafter called the Commissioners of Works) for the public service, and shall be subject to the provisions of the Act of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter twenty-eight, in all respects as if the same had been acquired under the provisions of that Act.

Lands, &c., in Great Britain, the Isle of Man, and the Channel Islands, for service of the customs, to vest in Commissioners of Works, &c.

The Act mentioned in this section is the Commissioners of Works Act, 1852. That Act, which amended the Crown Lands Act of 1851, constituted "The Commissioners of Her Majesty's Works and Buildings," as a corporation with that name and with a common seal for the purpose of purchasing, holding, and managing lands necessary for the public service. They were not empowered to purchase land compulsorily nor were the Lands Clauses Acts incorporated even in respect of voluntary purchases, but the Commissioners of Public Works Act,

Sect. 2. 1894 (57 & 58 Vict. c. 23), incorporated the Lands Clauses Acts with the above Act for the purpose of the purchase of land by the commissioners "except the provisions thereof relating to the purchase and taking of land otherwise than by agreement." The Inland Revenue Buildings Act, 1881 (44 & 45 Vict. c. 10), also gives the commissioners power to purchase land voluntarily for the service of the Inland Revenue and incorporates the Lands Clauses Acts with the same exception. Powers to take land for specific purposes have also been given to the Commissioners of Works from time to time, see, for example, the Public Offices Sites Act, 1882, 45 & 46 Vict. c. 32.

Copyholds now vested in customs to remain so, but in trust for Commissioners of Works.

3. All lands of copyhold or customary tenure which are now vested in the Secretary to the Commissioners of Customs, or any other person in trust for the same commissioners or for the service of Her Majesty's Customs, shall remain vested in such secretary or other person, but in trust for the Commissioners of Works for the public service, and shall be subject to the provisions of the said Act of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter twenty-eight, in all respects as if the same had been acquired under the provisions of that Act.

As to completion of existing contracts.

4. All contracts entered into by or on behalf of the Commissioners of Customs in respect of any lands or hereditaments in Great Britain, the Isle of Man, or the Channel Islands for the service of Her Majesty's Customs, and not at the passing of this Act fully performed and completed, may be enforced and shall be formed and completed for the public service in like manner as if the Commissioners of Works had been parties thereto instead of the Commissioners of Customs.

Commissioners of Works empowered to purchase lands, &c. Incorporation of Lands Clauses Acts. 8 & 9 Vict. cc. 18 & 19.

5. The Commissioners of Works shall, under and subject to the provisions of the Act of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter twenty-eight, from time to time purchase, hire, or otherwise acquire such buildings, lands, or other hereditaments as may be necessary for the service of Her Majesty's Customs within Great Britain, the Isle of Man, or the Channel Islands; and for the purposes of any such purchase the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation (Scotland) Act, 1845, and the Acts amending the same

respectively, except so much thereof as relates to the purchase of land otherwise than by agreement, are hereby incorporated with this Act, the special Act being construed to mean this Act, and the promoters of the undertaking being construed to mean the Commissioners of Works. Sect. 5.

6. The powers and provisions of sections three hundred and thirty-five to three hundred and forty-one, both inclusive, and section three hundred and forty-five of the Customs Consolidation Act, 1853, and of sections two hundred and seventy-five and two hundred and seventy-six of the Customs Consolidation Act, 1876, shall continue in force as if this Act had not been passed (if the Commissioners of the Treasury shall think fit to exercise the same), except that the moneys referred to in the two hundred and seventy-fifth section of the said Act of 1876, arising from or paid in respect of lands or hereditaments in Great Britain, or the Isle of Man, or the Channel Islands, shall be paid into the Bank of England to the account of the Commissioners of Works instead of to the Commissioners of Customs, and that lands which under the two hundred and seventy-sixth section of the said Act of 1876 would have vested in Her Majesty, her heirs or successors, shall vest in like manner in the Commissioners of Works.

Provisions of ss. 835 to 841, both inclusive, and 845 of 16 & 17 Vict. c. 107, and ss. 275 and 276 of 39 & 40 Vict. c. 36, to continue in force with variations.

The sections of the Customs Consolidation Act, 1853, referred to above, will be found at p. 426, *ante*. They enable the commissioners to take land compulsorily, and sections 40—68 of the Lands Clauses Acts are incorporated. See *In re Wovel's Estate*, 31 Ch. D. 607.

Sections 275, 276, of the Customs Consolidation Act, 1876, above referred to, are as follows:—

THE CUSTOMS CONSOLIDATION ACT, 1876.

As to the application of moneys from sale, purchase, or exchange of lands,—

275. The moneys produced by sales or exchange of any freehold, leasehold, or copyhold lands, or tenements bought, sold, or disposed of by, for, or under the direction of the Commissioners of Customs, including the moneys already paid by way of deposit for the purchase of any such lands or tenements already contracted to be sold, and the residue of the moneys to be received in respect or on account of such contract, shall be paid by the purchaser thereof, or by the person making such exchange, to the Commissioners of Customs for the time

Moneys produced by sale of lands to be paid to the Commissioners of Customs.

Sect. 6. being, or to such person as they shall appoint to receive the same, in trust for Her Majesty, her heirs and successors, for the use of the said customs ; and the receipt of such commissioner or other person as aforesaid for such moneys (such receipt to be endorsed on the conveyance, surrender, or assignment) shall effectually discharge the purchaser or person by whom or on whose account the same shall be paid.

Money for
lands of
incapaci-
tated per-
sons to be
paid into
Bank of
England.

276. In all cases where money shall have been or shall be agreed, or shall have been or shall be found by the verdict of any jury, to be paid for the use or possession of lands or hereditaments taken by virtue of the Customs Acts belonging to any persons under any disability or incapacity, or not having the absolute interest therein, the same shall be paid by warrant of the Commissioners of the Treasury into the Bank of England, in the name and with the privity of the Paymaster-General on behalf of the Chancery Division of the High Court of Justice, to be placed to his account there in the matter of the particular Act to the credit of the person claiming to be interested therein, naming them pursuant to the method prescribed by any Act in force for the time being for regulating the payment of money into court ; and immediately upon the filing in the Chancery Division of the High Court of Justice of the certificate of such Paymaster-General, with the receipt annexed of the payment into his name as aforesaid of any such money, in conformity with the eighth section of the Act of the twenty-second and twenty-third years of Her Majesty's reign, chapter twenty-one, the said land or hereditaments shall be vested in or to the use of Her Majesty, her heirs and successors.

7.

Repealed by the Statute Law Revision Act, 1894.

Act to be
registered
in Channel
Islands.

8. This Act shall be registered in the Royal Courts of the Islands of Guernsey and Jersey respectively, and the said Royal Courts respectively shall have full power and authority and are hereby required to register the same.

THE POST OFFICE (LAND) ACT, 1881.

44 & 45 VICT. CAP. 20.

An Act to amend the Law with respect to the Acquisition of Land and the Execution of Instruments for the purposes of the Post Office. [18th July, 1881.]

1. This Act may be cited as the Post Office (Land) Act, **Sect. 1.**
1881. **Short title.**

The second paragraph which dealt with short titles and the second section which made this Act come into operation on the 1st of September, 1881, have been repealed by the Statute Law Revision Act, 1894.

By the Short Titles Act, 1892 (55 & 56 Vict. c. 10), this Act is one of the Post Office Acts, 1837—1891. See that Act for the various short titles of the different Post Office Acts. The schedule to this Act, which dealt with short titles, has been repealed also by the Statute Law Revision Act, 1894.

Acquisition of Land.

3. *Whereas by the Post Office Duties Act, 1840, the Postmaster-General is constituted a body corporate for the purpose of holding and taking conveyances and leases of lands for the service of the post office, and it is expedient to give further powers for the acquisition of such lands: Be it, therefore, enacted as follows :—(a)* **Power of Postmaster-General for purchase of land.**
8 & 4 Vict. c. 96, s. 67.

(1.) The Postmaster-General, with the consent of the Treasury, may purchase land for the purpose of the post office, and shall take and hold such land on behalf of Her Majesty for the service of the post office; and for the purposes of this Act the expression "land" shall include any right or easement in, over, or in respect of land.

(2.) With respect to any such purchase of land the following provisions shall have effect; (that is to say)

(a.) The Lands Clauses Consolidation Act, 1845, and the **8 & 9 Vict. c. 18.**
Acts amending the same shall be incorporated with

Sect. 3.

this Act, except the provisions relating to access to the special Act, and in construing those Acts for the purposes of this section "the special Act" shall be construed to mean this Act, and "the promoters of the undertaking" shall be construed to mean the Postmaster-General, and "land" shall be construed to have the same meaning as is given to it by this Act.

- (b.) The bond required by section eighty-five of the Lands Clauses Consolidation Act, 1845, (b) shall be under the seal of the Postmaster-General, and shall be sufficient without sureties.
- (c.) The provisions of the said incorporated Acts with respect to the purchase of land compulsorily shall not be put in force until the sanction of Parliament has been obtained in manner in this Act mentioned.
- (d.) Three months at the least before an application is made to Parliament for sanction to the compulsory purchase of land under this Act, the Postmaster-General with the consent of the Treasury shall serve, in manner provided by the said incorporated Acts, a notice on every owner or reputed owner, lessee or reputed lessee, and occupier of any land intended to be so purchased, describing the land intended to be taken, and in general terms the purposes to which it is to be applied, and stating the intention of the Treasury to obtain the sanction of Parliament to the purchase thereof, and inquiring whether the person so served assents or dissents to the taking of his land, and requesting him to forward to the Treasury any objections he may have to his land being taken.
- (e.) The Treasury shall, at some time after the service of such notice, make a local inquiry by a competent officer into the objections made by any persons

whose land is required to be taken, and by other persons, if any, interested in the subject matter of such inquiry. Sect. 3.

(f.) The Treasury, if satisfied after such inquiry has been made that the land ought to be taken, may submit a Bill to Parliament containing provisions authorising the Postmaster-General to take such land, and such Bill shall in all respects be deemed to be a public Bill, and, if passed into an Act, to have conveyed the sanction of Parliament to the purchase compulsorily of the land therein mentioned or referred to, and the period for such compulsory purchase shall be three years after the passing of such Act: Provided that if while such Bill is pending in either House of Parliament a petition is presented against anything comprised therein, the Bill may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills.

(g.) The Chancellor and Council for the time being of the Duchy of Lancaster may, if they think fit, from time to time contract and agree with the Postmaster-General for the sale of, and may absolutely make sale and dispose of, for such sum or sums of money as to the said chancellor and council appear sufficient consideration for the same, any land belonging to Her Majesty, her heirs or successors, in right of the said duchy, which, for the purpose of the post office, the Postmaster-General may from time to time deem it expedient to purchase with the consent of the Treasury, and such land may be granted and assured to the Postmaster-General, and the said moneys shall be paid and dealt with as if the said land had been sold under the authority of the Duchy of Lancaster Lands Act, 1855.

18 & 19
Vict. c. 58.

(a) The recital has been repealed by the Statute Law Revision Act, 1894.

(b) *Ante*, p. 222.

Sect. 4.

Power to
sell, ex-
change, or
lease land
purchased.
26 & 27
Vict. c. 43.

4. All the provisions of the Post Office Lands Act, 1863, with respect to the sale, exchange, leasing, or surrender of any lands vested in the Postmaster-General shall apply to any land purchased by the Postmaster-General under the powers of this Act.

Execution of Instruments.

Exemption
of Post-
master-
General
from
stamp
duty.

5. Every deed, instrument, receipt, or document made or executed for the purpose of the post office by, to, or with Her Majesty or any officer of the post office, shall be exempt from any stamp duty imposed by any Act, past or future, except where such duty is declared by the deed, instrument, receipt, or document, or by some memorandum endorsed thereon, to be payable by some person other than the Postmaster-General, and except so far as any future Act specifically charges the same.

The second paragraph has been repealed by the Statute Law Revision Act, 1894.

Power of
deputy of
Post-
master-
General
to give
notice, or
make
claim, dis-
tress, &c.

6. Any person having authority in that behalf, either general or special, under the seal of the Postmaster-General, may, on behalf of the Postmaster-General, give any notice and make any claim, demand, entry, or distress which the Postmaster-General in his corporate capacity or otherwise might give or make, and every such notice, claim, demand, entry, and distress, shall be deemed to have been given and made by the Postmaster-General on behalf of Her Majesty.

Section 7, which dealt with the execution of instruments, was repealed by the Post Office (Protection) Act, 1884 (47 & 48 Vict. c. 76), s. 51, and instead it was enacted by section 15 of that Act as follows:—

15. Any instrument requiring to be executed by the Postmaster-General, or to which he is a party, may be executed by any of the secretaries of the post office in the name of the Postmaster-General, and if so executed, shall be deemed to have been executed by the Postmaster-General, and shall have effect accordingly.

Any instrument purporting to be executed by any of the secretaries of the post office in the name of the Postmaster-General, shall, until the contrary is proved, be deemed to have been so executed without proof of the official character of the person appearing to have executed the same

Supplemental.

8. In this Act, unless the context otherwise requires,— **Sect. 8.**
The expression “the purpose of the post office” means any **Defini-**
purpose of any of the Post Office Acts or of any Acts **tions.**
for the time being in force relating to post office money
orders, post office telegraphs, or post office savings banks,
and includes any purpose relating to or in connexion
with the execution of the duties for the time being
undertaken by the Postmaster-General or any of his
officers.

Other expressions shall have the same meaning as in the ^{1 Vict.}
Post Office (Offences) Act, 1837. _{c. 36.}

As to telegraphs, see the Telegraph Act, 1892, *post*, and notes thereto.
Sections 9 and 10 deal with the application of the Act to Scotland
and Ireland respectively.

THE METROPOLITAN OPEN SPACES ACT, 1881.

44 & 45 VICT. CAP. 34.

An Act to amend the Metropolitan Open Spaces Act, 1877.

[11th August, 1881.]

The principal provisions of this Act and of the Metropolitan Open Spaces Act, 1877, as amended by this Act, are by the Open Spaces Act, 1887, extended to every urban sanitary district, and to any rural sanitary district in respect of which the sanitary authority shall have been invested by an order of the Local Government Board, with the powers of the Open Spaces Acts. The Act of 1877 thus extended enables such local authorities to purchase land voluntarily for the exercise and recreation of the public. The Act of 1881 enables trustees holding land under a private or local Act of Parliament, for the purposes of a garden or open space, to convey the same to the local authority to be held as an open space, with the consent of two-thirds of the owners and occupiers of any houses fronting upon or the owners or occupiers of which are liable to be rated for the maintenance of such open space, and who are present at a meeting to be held for the purpose. It may be conveyed for valuable or nominal consideration, or as a free gift. Section 2. The owner of any open space, subject to rights of user for exercise and recreation, may, with the consent of two-thirds of the persons interested and present at a meeting held for the purpose, convey to or grant an easement to or enter into an agreement with the local authority in respect thereof, so that it may be used as a public open space. Section 3. Disused burial grounds may also be transferred to the local authority for a similar purpose, who may lay them out and manage them. In such a case such management and control must be previously authorised by a faculty of the bishop of the diocese. Sections 4 and 5.

The Open Spaces Act, 1890 (53 & 54 Vict. c. 15), further enables trustees holding land in trust for the purposes of public recreation, other than under an Act of Parliament, or for any charitable purpose, with certain consents and upon certain conditions, to transfer the same to the local authority.

These local authorities are now district councils under the Local Government Act, 1894.

An open space means any land either within or without or partly within or without the district of a local authority, of which not more than a twentieth part is covered with buildings, and which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied.

As regards compensation for any interests taken away under these Acts it is provided by this Act as follows :—

9. No estate, interest, or right of a profitable or beneficial nature, in, over, or affecting an open space, churchyard, cemetery, or burial ground shall, except with the consent of the body or person entitled thereto be taken away or injuriously affected by anything done under this Act without compensation being made for the same ; and such compensation shall be paid by the metropolitan board, (a) vestry, or district board by which such estate, interest or right is taken away or injuriously affected, and shall in case of difference, be ascertained and provided in the same manner as if the same compensation were for the compulsory purchase and taking or the injurious affecting of lands under the provisions of the Lands Clauses Consolidation Act, 1845, and any Acts amending the same. Sect. 9.
Provision
for com-
pensation.

8 & 9 Vict.
c. 18.

(a) By the Open Spaces Act, 1887, s. 5, as regards sanitary authorities outside London having powers under these Acts, the powers of the Metropolitan Local Board are to be enjoyed by such sanitary authorities, and the words "Metropolitan Board" shall be used in such case as if they meant the sanitary authority of the district.

THE COMMONABLE RIGHTS COMPENSATION ACT, 1882.

45 & 46 VICT. CAP. 15.

An Act to provide for the better application of moneys paid by way of compensation for the compulsory acquisition of common lands and extinguishment of rights of common.

[19th June, 1882.]

8 & 9 Vict.
c. 18. WHEREAS under the provisions of the Lands Clauses Consolidation Act, 1845, and of railway and other special Acts of Parliament, money is directed or authorised to be paid to a committee as compensation for the extinction of commonable rights or for lands, being common lands or in the nature thereof, the right to the soil of which belongs to the commoners :

15 & 16
Vict. c. 79.
17 & 18
Vict. c. 97. And by the Lands Clauses Consolidation Act, 1845,^(a) and by the Inclosure Act, 1852,^(b) and the Inclosure Act, 1854,^(c) certain powers of apportioning and otherwise dealing with such money are conferred upon any such committee and upon the Inclosure Commissioners for England and Wales (hereinafter called the Commissioners), but such powers are found in practice to be insufficient, and money paid by way of compensation as aforesaid is often in consequence useless to the persons interested therein :

And whereas it is expedient to give such powers of dealing with such compensation money as are hereinafter specified, but such powers cannot be conferred without the sanction of Parliament :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

(a) *Ante*, p. 251.

(b) *Ante*, p. 424.

(c) *Ante*, p. 433.

1. This Act may be cited as the Commonable Rights Compensation Act, 1882. Sect. 1.
Short title.

2. (1.) With respect to any money which has been or hereafter may be paid by any railway or other public company or corporate body or otherwise under the provisions of the Lands Clauses Act and any Act incorporated therewith, or of any other Act of Parliament to a committee of commoners as compensation for the extinguishment of commonable or other rights or for lands being common lands or in the nature thereof the right to the soil of which may belong to the commoners, the committee (or a majority in number thereof) or, after the expiration of twelve months from the payment of such money to the committee, any three of the persons claiming to be interested in such money may make application in writing to the Commissioners to call a meeting of the persons interested in such money to consider the application thereof, and the Commissioners shall call a meeting accordingly, and at such meeting the majority in number and the majority in respect of interest of the persons present may decide by resolution that such money shall be applied and laid out in one or more of the following ways :

- (a.) In the improvement of the remainder of the common land in respect of a portion of which such money has been paid ;
- (b.) In defraying the expense of any proceedings under the Metropolitan Commons Acts or under the Inclosure Acts, 1845 to 1878, with reference to a scheme for the local management, or a provisional order for the regulation, of such common land, or of any application to Parliament for a private bill or otherwise for the preservation and management of such common land as an open space ;
- (c.) In defraying the expense of any legal proceedings for the protection of such common land, or the commoners' rights over the same ;

Application of compensation money for common lands.

8 & 9 Vict. c. 118, &c.

Sect. 2. (d.) In the purchase of additional land to be used as common land ;

(e.) In the purchase of land to be used as a recreation ground for the neighbourhood ;

and any such resolution shall bind the minority and all absent parties, and the Commissioners shall make an order under their seal for the payment to them of any expenses incurred by them in relation to the matter, and (subject to such payment) for the application of the money according to such resolution, and the committee or the persons in whose names such money stands or is invested, or the survivors or survivor in account of such persons, or the legal personal representative of such survivor, shall, upon service of any such order of the Commissioners as aforesaid upon them or any of them or any person on their behalf as the Commissioners may direct, pay and apply the said money or realise any security in which the same is invested, and pay and apply the proceeds thereof in manner directed by the said order.

(2.) Any land so purchased as aforesaid for use as common land shall be conveyed to and vest in trustees upon trusts for the persons interested, such trustees to be appointed, and such trusts, and the powers and duties of the trustees, and provisions for the appointment of new trustees from time to time to be declared and provided by an order under the seal of the commissioners, pursuant to resolutions to be passed at a special meeting of the persons interested, convened by the said commissioners by such majorities as aforesaid.

(3.) Every appointment of a new trustee or of new trustees, in pursuance of this Act, shall be subject to confirmation by the commissioners under their seal, and upon such confirmation the land shall vest in the remaining and the newly appointed trustees without any conveyance.

(4.) The commissioners shall publish such notice of any meeting held under this Act, and frame such rules and give such directions for the conduct of such meetings and the

service of orders made by them under this Act as they may deem fit, and may, if they think fit, direct an assistant commissioner appointed by them to preside at any such meeting, and any such meeting may be adjourned from time to time. Sect. 2.

(5.) Any land so purchased as aforesaid for use as recreation ground shall be conveyed to and vest in the local authority as specified in the schedule to this Act for the district within which such land is situate, and shall be held and managed by such local authority, subject to and in accordance with the provisions relating to recreation grounds respectively contained in the Inclosure Acts, 1845 to 1878.

3. Any moneys heretofore paid or hereafter to be paid by any railway or other public company or body corporate or otherwise under the provisions of the Lands Clauses Act, 1845, and any Act incorporated therewith, or any other Act of Parliament, to any local authority as specified in the schedule to this Act, or to the churchwardens and overseers of a parish in respect of any recreation ground or allotment for field gardens taken under the powers of any such Act or Acts of Parliament shall be applied in manner provided by the Inclosure Acts, 1845 to 1878, as amended by the Commons Act, 1879, with respect to the surplus rents arising from recreation grounds and field gardens respectively. Applica-
tion of
compensa-
tion money
for recrea-
tion
grounds
and field
gardens.

42 & 43
Vict. c. 37.

4. In any case where money paid by way of compensation as aforesaid has, before the passing of this Act, been applied in any one or more of the ways authorised by this Act, a resolution may be passed, at any meeting of the persons interested, called by the commissioners in manner provided by this Act, by such majorities as aforesaid, approving of such application, and such application shall, upon the allowance of such resolution by the commissioners under their seal, be deemed to have been lawfully made under the provisions of this Act; and the committee or other persons by whom such money has been so applied shall thereupon be discharged from all liability in respect of such money so applied. And Provision
for cases
where
money
paid by
way of
compensa-
tion has
already
been
applied in
the manner
authorised
by this
Act.

Sect. 4. the provisions of this Act contained with respect to the declaration of trusts, and the powers and duties of trustees, and the appointment of new trustees, from time to time, shall apply in every case in which such money has, before the passing of this Act, been laid out in the purchase of land.

Deposit of
orders.

5. Copies of all orders made by the commissioners under this Act shall be deposited and kept in like manner as copies of an award are by the Inclosure Act, 1845, directed to be deposited and kept.

Exception
of the New
Forest.

6. This Act shall not extend to the New Forest.

SCHEDULE.

Situation of Land.	Local Authority.
Within the Metropolis - - - -	The Metropolitan Board of Works.
Not within the Metropolis, but within the district of an urban sanitary authority, as defined by the Public Health Act, 1875, or any Act amending the same.	The urban sanitary authority.
Elsewhere than within the Metropolis or the district of an urban sanitary authority as above defined.	The churchwardens and overseers of the parish.

THE ELECTRIC LIGHTING ACT, 1882.

45 & 46 VICT. CAP. 56.

An Act to facilitate and regulate the supply of Electricity for Lighting and other purposes in Great Britain and Ireland.

[18th August, 1882.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as the Electric **Sect.1.**
Lighting Act, 1882. **Short title.**

2. The provisions of this Act shall apply to every local **Applica-**
authority, company, or person who may by this Act or any **tion of**
license or provisional order granted under this Act, or by **Act.**
any special Act to be hereafter passed, be authorised to supply electricity within any area (in this Act referred to as "the undertakers") and to every undertaking so authorised, except so far as may be expressly provided by any such special Act ; and every such license, provisional order, and special Act, is in this Act included in the expression "license-order, or special Act."

This Act has been amended by the Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), and the two Acts are to be read together as one Act.

By these Acts local authorities, companies, or persons may be authorised to supply electricity and to construct the necessary works for so doing. They may be authorised, subject to certain consents, by license of the Board of Trade (section 3 of 1882 Act), by provisional order confirmed by Act of Parliament (section 4 of 1882 Act), or by special Act.

Section 10 enables lands to be purchased and the works to be constructed. There is no power, however, to take lands compulsorily. Compensation for any damage done is given by section 17.

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Sect. 10.

General
powers of
under-
takers
under
licence or
provisional
order.

10. The undertakers may, subject to and in accordance with the provisions and restrictions of this Act, and of any rules made by the Board of Trade in pursuance of this Act, and of any license, order, or special Act authorising or affecting their undertaking, and for the purpose of supplying electricity, acquire such lands by agreement, construct such works, acquire such licenses for the use of any patented or protected processes, inventions, machinery, apparatus, methods, materials, or other things, enter into such contracts, and generally do all such acts and things as may be necessary and incidental to such supply.

As to making compensation, see section 17, *infra*, and note thereto.

* * * * *

Incorporation
of
certain
provisions
of Clauses
Consolidation
Act.

12. The provisions of the following Acts shall be incorporated with this Act ; that is to say,

(1.) The Lands Clauses Acts, except the enactments with respect to the purchase and taking of lands otherwise than by agreement, and except the enactments with respect to the entry upon lands by the promoters of the undertaking ; and

10 & 11
Vict. c. 15.

(2.) The provisions of the Gasworks Clauses Act, 1847,^(a) with respect to breaking up streets for the purpose of laying pipes, and with respect to waste or misuse of the gas or injury to the pipes and other works, except so much thereof as relates to the use of any burner other than such as has been provided or approved of by the undertakers ; and

34 & 35
Vict. c. 41.

(3.) Sections thirty-eight to forty-two inclusive, and sections forty-five and forty-six, of the Gasworks Clauses Act, 1871.

For the purposes of this Act, in the construction of all the enactments incorporated by this section "the special Act" means this Act inclusive of any license, order, or special Act ; and the "promoters" or "undertakers," and "the undertaking," as the

case may be, mean the undertakers and the under- Sect. 12.
taking respectively under this Act.

In the construction of the said Lands Clauses Acts, "land" includes easements in or relating to lands.

In the construction of the said Gasworks Clauses Act, 1847, and the Gasworks Clauses Act, 1871, the said Acts shall be construed as if "gas" meant "electricity," and as if "pipe" meant electric line, and "works" as defined by this Act, and as if "the limits of the special Act" meant the area within which the undertakers are authorised to supply electricity under any license, order, or special Act.

All offences, forfeitures, penalties, and damages under the said incorporated provisions of the said Acts or any of them may be prosecuted and may be recovered in manner by the said Acts respectively enacted in relation thereto, provided that sums recoverable under the provisions of section forty of the Gasworks Clauses Act, 1871, shall not be recovered as penalties, but may be recovered summarily as civil debts.

(a) Under section 6, compensation must be given for breaking up the streets, and private property must not be entered upon. See note to the Gas and Water Facilities Act, 1870, *ante*, p. 498. As to mines below the streets, see section 33, *infra*, p. 548.

* * * * *

16. If at any time after the undertakers have placed any works under, in, upon, over, along or across any canal, any person having power to construct docks, basins or other works upon any land adjoining to or near such canal, constructs any dock, basin or work on such land, but is prevented by the works of the undertakers from forming a communication for the convenient passage of vessels with or without masts between such dock, basin or other work, and such canal; or if the business of such dock, basin or other work is interfered with by reason or in consequence of any such works of the undertakers, then the undertakers at the request of such person,

Clause for
protection
of canals.

Sect. 16. and on having reasonable facilities afforded them by him for placing works round such dock, basin or other work, under, in, upon, over, along or across land belonging to or under his control, shall remove and place their work accordingly. If any dispute arises between the undertakers and such person as to the facilities to be afforded to the undertakers, or as to the direction in which the works are to be placed, it shall be determined by arbitration.

As to arbitration, see section 28.

Compensation for damage.

17. In the exercise of the powers in relation to the execution of works given them under this Act, or any license, order, or special Act, the undertakers shall cause as little detriment and inconvenience and do as little damage as may be, and shall make full compensation to all bodies and persons interested for all damage sustained by them by reason or in consequence of the exercise of such powers, the amount and application of such compensation in case of difference to be determined by arbitration.

The compensation here referred to is in respect of the execution of the works. Section 10, read in conjunction with the interpretation section (32), is confined to construction of the works required to supply electricity, and does not apply to their subsequent user. Section 17 does not apply to damages caused by the use of the works. *Shelfer and City of London Electric Lighting Company and Meux's Brewery Company v. Lawe* (1895), 1 Ch. 287, p. 320.

Undertakers of electrical works are not authorised by these sections, apart from any provisions of the provisional order, to create a nuisance. Such works are distinct from railways which are constructed within a definite line of operations within which a railway company can make its works, and if a nuisance is created, notwithstanding reasonable care, it is to be taken as sanctioned by the Legislature. There is no such limit in these cases, and if a nuisance is created the undertakers are liable to be restrained by injunction, and the payment of damages is not a sufficient remedy. S. C., and see *Attorney-General v. Gas Light and Coke Company*, 7 Ch. D. 217; *Attorney-General v. Leeds Corporation*, 5 Ch. 583; *Metropolitan Asylum District Board v. Hill*, 6 A. C. 193; *National Telephone Company v. Baker* (1893), 2 Ch. 186.

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Arbitration.

28. Where any matter is by this Act, or any license, order, or special Act, directed to be determined by arbitra-

tion, such matter shall, except as otherwise expressly provided, be determined by an engineer or other fit person to be nominated as arbitrator by the Board of Trade on the application of either party, and the expenses of the arbitration shall be borne and paid as the arbitrator directs. Sect. 28.

Any license or provisional order granted under this Act shall be deemed to be a special Act within the meaning of the Board of Trade Arbitrations, &c., Act, 1874.

37 & 38
Vict. c. 40.

* * * * *

32. In this Act, unless the context otherwise requires— Interpretation.

The expression “electricity” means electricity, electric current, or any like agency :

The expression “electric line” means a wire or wires, conductor, or other means used for the purpose of conveying, transmitting, or distributing electricity with any casing, coating, covering, tube, pipe, or insulator enclosing, surrounding, or supporting the same, or any part thereof, or any apparatus connected therewith for the purpose of conveying, transmitting, or distributing electricity or electric currents :

The expression “works” means and includes electric lines, also any buildings, machinery, engines, works, matters, or things of whatever description required to supply electricity and to carry into effect the object of the undertakers under this Act :

The expression “company” means any body of persons corporate or unincorporate :

The expression “Lands Clauses Acts” means the Lands Clauses Consolidation Acts, 1845, 1860, and 1869 : 8 & 9 Vict.
c. 18.
23 & 24
Vict.

The expression “street” includes any square, court, or alley, highway, lane, road, thoroughfare, or public passage, or place, within the area in which the undertakers are authorised to supply electricity by this Act or any license, order, or special Act : c. 106.
32 & 33
Vict. c. 18.

Sect. 32.**32 & 33**

Vict. c. 73.

The expression "telegram" has the same meaning as in the Telegraph Act, 1869.

For the
protection
of mines.

33. Nothing in this Act shall limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any electric line shall be laid to work such mines and minerals.

It would therefore appear that mine owners will not be liable in respect of any damage caused to the lines by working any mines that may lie under them. In respect of gas pipes they have been held liable for such damage. See *Normanton Gas Company v. Pope*, 52 L. J. Q. B. 629, and note to the Gas and Water Facilities Act, 1870, *ante*, p. 498. In respect of a local authority carrying out the works, the Public Health (Support of Sewers) Act, 1883, *post*, p. 551, may possibly apply unless the provision in section 5 excludes this section.

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THE LANDS CLAUSES (UMPIRE) ACT, 1883.

46 & 47 VICT. CAP. 15.

An Act to amend the Lands Clauses Consolidation Act, 1845.

[18th June, 1883.]

WHEREAS it is expedient that the provisions contained in the Lands Clauses Consolidation Act, 1845, in relation to the appointment of umpires should be amended :

8 & 9 Vict.
c. 18.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The following words in section twenty-eight of the Lands Clauses Consolidation Act, 1845, are hereby repealed, that is to say, "in any case in which a railway company shall be one party to the arbitration, and two justices in any other case," and that section shall, in relation to the appointment of any umpire under the provisions thereof after the passing of this Act, apply as if such words were omitted, and the same section shall accordingly be read and have effect as follows :

Sect. 1.

Amend-
ment of
section 28
of 8 Vict.
c. 18 ex-
tending
the power
of appoint-
ment of
umpire by
Board of
Trade.

28. If in either of the cases aforesaid the said arbitrators shall refuse or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

See notes to section 28 of the Lands Clauses Act, 1845.

Sect. 2. **2.** This Act may be cited as the Lands Clauses (Umpire)
Short title. Act, 1883.

By the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 23, in any Act passed after the 1st January, 1890, unless the contrary intention appears, "the expression 'Lands Clauses Acts' shall mean as respects England and Wales, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Amendment Act, 1860, the Lands Clauses Consolidation Act, 1869, and the Lands Clauses (Umpire) Act, 1883, and any Acts for the time being in force amending the same." There is one other such Act—The Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11).

THE PUBLIC HEALTH ACT, 1875, (SUPPORT OF SEWERS,) AMENDMENT ACT, 1883.

46 & 47 VICT. CAP. 37.

An Act to amend the Public Health Act, 1875, and to make provision with respect to the support of public sewers and sewage works in mining districts.

[25th August, 1883.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Public Health Act, 1875, (Support of Sewers,) Amendment Act, 1883, and shall be construed as one with the Public Health Act, 1875, (in this Act called the principal Act,) as amended by the Acts for the time being in force amending the same. Sect. 1.
Short title
and construction.

2. In this Act,—

The expression “sanitary work” means any existing or future building or work constructed by or vested in or under the control of a local authority under the powers or for the purposes of so much of the principal Act or of any general or local Act or Provisional Order as relates to the construction or maintenance of any works of sewerage, drainage, sewage disposal, lighting, or water supply, and includes any fixtures, pipes, fittings, or apparatus connected with any such work, and belonging to or used by the local authority :

The expression “support” includes vertical and lateral support :

The expression “Sanitary Act” means the Act or Provisional Order under the authority of which a sanitary work

Inter-
pre-
tation.

Sect. 2. has been or is constructed or is maintained, whether such Act or Order was passed and confirmed before or after the commencement of this Act :

The expression " person " includes a body corporate.

Applica-
tion of
provisions
of the
Water-
works
Clauses
Act, 1847.
10 & 11
Vict. c. 17,
with
respect to
mines, to
sanitary
works over
mines.

3. The provisions of the Waterworks Clauses Act, 1847, sections eighteen to twenty-seven (both inclusive), with respect to mines, shall, in relation to any sanitary work of a local authority, be deemed to be incorporated with this Act and with the Sanitary Act under the authority of which such sanitary work has been or is constructed or is maintained, with the following modifications (that is to say) :

- (1.) For the purposes of such incorporation the said provisions of the Waterworks Clauses Act, 1847, shall be construed as if the expression " the undertakers " referred to the local authority, and as if the expression " the special Act " referred to such Sanitary Act and this Act, and as if expressions relating to pipes, conduits, or other works referred to the sanitary work :
- (2.) The local authority, by or with any notice under the Waterworks Clauses Act, 1847, of willingness to treat for or make compensation, or of intention to prevent or interfere with the working of any mines, may specify and define the nature and extent of support which they require to be left, and any such notice may extend to minerals beyond the distance of forty yards mentioned in the said Act or to such less distance as the local authority think fit :
- (3.) As regards sanitary works existing at the passing of this Act the local authority shall cause the survey and map referred to in section nineteen of the Waterworks Clauses Act, 1847, to be made within twelve months after the passing of this Act :
- (4.) The amount of any compensation in respect of support for a sanitary work payable by a local authority

under the provisions of the Waterworks Clauses Act, 1847, as incorporated with this Act or the Sanitary Act, together with the costs of and incident to settling the same by arbitration or otherwise, shall be paid, charged, and borne in the same manner, and subject to the same powers and provisions as to borrowing and otherwise, as is provided with respect to the expenses of the construction or maintenance of the sanitary work by the Sanitary Act : Sect. 3.

- (5.) A local authority may from time to time make agreements with the owners, lessees, or occupiers of or the persons working any mine for compromising any claim made or to be made in respect of anything done or omitted before the passing of this Act in relation to the matters in this Act mentioned or otherwise for carrying into effect the purposes of this Act in relation to the past or future working of mines.

The provisions of this Act shall apply to every sanitary work as defined in this Act, whether the land on, in, over, or under which such work is situate is or is not vested in or occupied by the local authority, and is or is not wholly or partially dedicated to the public as a street, highway, or public place.

The provisions of the Waterworks Clauses Act, 1847, referred to in this section will be found at pp. 392—397, *ante*. They are in many respects similar to the mining sections in the Railways Clauses Act, 1845, ss. 77—85, *ante*, p. 358, in the notes to which will be found the cases in respect of mines under public undertakings.

Support.—It is to be noticed that this Act only deals with support to sanitary work from mines. The general law of support is left untouched. There are no statutory provisions regulating the support that is to be given to sewers and pipes by land in which there are no mines.

The general law will therefore apply. It should be noticed that the Legislature in enabling local authorities to lay pipes and sewers enables them thereby to acquire a corporeal interest in land and not merely an easement. They acquire the stratum occupied by the sewer or pipe. To this stratum the natural right of support subjacent and adjacent

Sect. 3. appertains. If an additional burden is imposed upon the land subjacent or adjacent by the weight of the sewer the right to impose this additional burden upon the land could only be acquired by grant or prescription, unless given by statute. Section 308 of the Public Health Act, 1875, provides that compensation shall be made for all injury done in carrying out the purposes of the Act. If a sewer is to be made over private land the stratum need not be previously purchased, but the owner will be entitled to be compensated for the stratum taken and all other damage, including the burden of giving additional support. *Roderick v. Aston Local Board*, 5 Ch. D. 328; *Thornton v. Nutter*, 31 J. P. 419; *Taylor v. Corporation of Oldham*, 4 Ch. D. 395; and see *North London Railway Company v. Metropolitan Board of Works*, Job. 405.

Questions have arisen under various statutes as to whether the particular statute imposed the burden of supporting this additional weight upon the owner. It has been decided as regards the Public Health Act, 1875, that such a burden is imposed by the Legislature. The point was fully discussed and decided in the case of *In re Corporation of Dudley*, 8 Q. B. D. 86, which was a case in regard to mines, and was decided immediately before the passing of this Act. According to that case the general rule is that where the Legislature gives power to a public body to do anything of a public character, the Legislature means also to give to the public body all rights, without which the power would become wholly unavailable, although such a meaning cannot be implied in relation to circumstances arising accidentally only. The Legislature, therefore, in requiring the local authorities to make and maintain sewers, by necessary implication confers upon them that right of support which under ordinary circumstances is necessary. The landowner has the obligation imposed upon him to leave sufficient earth to support the additional burden, if any, which the sewer may cause.

The same principle has been followed in respect of gas pipes laid down under an Act incorporating the Gasworks Clauses Acts. See *Normanton Gas Company v. Pope*, 49 L. T. (N.S.) 798.

In such cases the landowner must not do any act to interfere with the support, but he will be entitled to compensation, to be assessed at one time, for prospective as well as actual injury.

In the case of the *Metropolitan Board of Works v. Metropolitan Railway Company*, L. R. 4 C. P. 192, where a sewer was injured by excavating adjoining land, it was held in the absence of any compensation clause, that the Legislature could not have intended this burden to have been placed upon the adjoining land, and that the local authority had, therefore, no right of support to the sewer.

"Shall apply to every Sanitary Work."—The definition of sanitary work in section 2 should be noted as the heading of this Act is somewhat misleading. It applies to works for lighting and water supply as well as to works connected with sewers. In view of the saving, in section 5, of express enactments, it seems doubtful whether this Act extends to works for electric lighting. See section 33 of the Electric Lighting Act, 1882, *ante*, p. 548.

Limita-
tion of
right to
support

4. Except as in this Act provided, a local authority shall not by reason only of anything contained in the Sanitary Act under the authority of which a sanitary work has been

or is constructed or maintained be deemed to have acquired **Sect. 4.**
 or to be entitled to or to be bound to acquire or make ^{for sani-}
 compensation for any right of support for such sanitary ^{tary works}
 work as against any person owning or working, or being ^{over}
 lessee or occupier of or entitled to work or otherwise in- ^{mines.}
 terested in any mine ; and nothing in such Sanitary Act
 shall be deemed to have subjected or to subject any such
 person to any liability to the local authority in respect of
 damage to a sanitary work caused in or consequent upon the
 working of any mines in a reasonable and proper manner.

5. Nothing in this Act shall be construed to repeal, ^{Savings.}
 invalidate, or affect any express enactment in a sanitary or
 other Act with respect to rights of support for sanitary
 works, or any agreement made before the passing of this
 Act with respect to such rights, or to affect any action,
 arbitration, or other legal proceedings concluded before or
 pending at the passing of this Act.

Where any right of support has been acquired before the
 passing of this Act by a local authority in respect of any
 sanitary work, and no compensation is at the passing of this
 Act recoverable in respect of such right, nothing in this Act
 shall be construed to apply to the work in respect of which
 such right has been acquired, or operate to deprive the
 local authority of such right or to entitle any person to
 any compensation in respect thereof, to which such person
 would not have been entitled if this Act had not been
 passed.

THE PRISON ACT, 1884.

47 & 48 VICT. CAP. 51.

An Act to remove doubts as to the powers of the Secretary of State in relation to the altering, enlarging, rebuilding, and building of prisons, and appropriating any building for a prison. [7th August, 1884.]

28 & 29
Vict.
c. 126.

WHEREAS under the Prison Act, 1865, every prison authority had power to alter, enlarge, or rebuild any of its prisons, and to build other prisons in lieu of or in addition to any subsisting prisons, if the necessity so to do was shown, and the approval of the Secretary of State obtained, and the other conditions complied with, and doubts have arisen as to whether the Prison Act, 1877, enables the Secretary of State to exercise the said power, and it is expedient to remove such doubts :

40 & 41
Vict. c. 21.

Be it, therefore, enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Sect 1.

Construc-
tion and
short title.

1. This Act shall be construed as one with the Prison Act, 1877.

This Act may be cited as the Prison Act, 1884, and this Act and the Prison Act, 1877, may be cited together as the Prison Acts, 1877 and 1884.

Explan-
ation as to
power of
Secretary
of State to
enlarge

2. (1.) The Secretary of State, with the approval of the Treasury, may alter, enlarge, or rebuild any prison, and build any new prison which appears to be necessary, and for that purpose shall have all the powers conferred by the

Prison Act, 1865, for the like purpose on a prison authority **Sect. 2.**
 who had obtained the sanction of a Secretary of State. **and build
 new
 prisons.**

(2.) The Secretary of State, in lieu of building, may by such declaration as hereinafter mentioned, appropriate as a prison any suitable building or part of a building vested in him or under his control, including any prison for convicts under the superintendence of the directors of convict prisons which is situate in England.

(3.) The Secretary of State may from time to time declare that any building or part of a building built for or appropriated as a prison in pursuance of this Act shall, and the same accordingly shall, be a prison under the Prison Act, 1865, and the Prison Act, 1877, and be within the jurisdiction of the Prison Commissioners, and be a prison for the county and prison jurisdiction named in the declaration ; such declaration may be at any time revoked by the Secretary of State, but while in force shall have full effect.

Provided that nothing in such declaration shall alter the legal estate in any building.

(4.) Any act of the Secretary of State done before the passing of this Act, which if done after the passing of this Act would have been valid, shall be as valid as if it had been done in pursuance of this Act.

(5.) There shall be repealed sections twenty-three to twenty-nine, both inclusive, of the Prison Act, 1865, without prejudice to any right acquired or liability incurred under those sections.

By the Prison Act, 1865, the prison authorities who were usually either the local justices or municipal council, were required to provide prison accommodation. By the Prison Act, 1877, the prisons were vested in prison commissioners who act under the Secretary of State, and the prison authorities were no longer required to provide prisons. Sections 6, 16, and 48.

By the Prison Act of 1865, as mentioned in the above recital, prison authorities had power to alter, enlarge, and rebuild prisons or to build new ones (section 23), and they had power to take land for this purpose. In the Prison Act, 1877, provisions were omitted to enable the Secretary of State to exercise these powers. After the prison authorities had

Sect. 2. obtained the sanction of the Secretary of State they had power to take land compulsorily for enlarging a prison or making it more commodious or safe. For new prisons they could only take land by agreement. The following are the provisions :—

THE PRISON ACT, 1865.

* * * * *

Certain provisions of 8 & 9 Vict. c. 18 incorporated.

44. Any prison authority may purchase and hold such lands or easements relating to lands as they may require for the purposes of this Act ; and to facilitate such purposes, the Lands Clauses Consolidation Act, 1845, and the Act amending the same, passed in the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and six, shall be incorporated with this Act, with the exceptions and subject to the conditions hereinafter contained ; (that is to say,)

- (1.) There shall not be incorporated with this Act the sections and provisions of the Lands Clauses Consolidation Act, 1845, hereinafter mentioned ; (that is to say,) section 16, whereby it is provided that the capital is to be subscribed before the compulsory powers are to be put in force ; section seventeen, whereby it is provided that the certificate of the justices shall be evidence that the capital has been subscribed ; the provisions relating to the entry upon lands by the promoters of the undertaking contained in sections eighty-four to ninety-one, both inclusive ; section one hundred and twenty-three, whereby a limit of time for the compulsory purchase of land is imposed ; or the provisions relating to access to the special Act :
- (2.) In the construction of this Act and the said incorporated Acts, this Act shall be deemed to be the special Act, and the prison authority shall be deemed to be the promoters of the undertaking, and the word "lands" shall include any easement in or out of lands :
- (3.) The prison authority shall not, except in respect of lands contiguous to a prison, and required for the purpose of enlarging a prison or rendering it more commodious or safe, put in force the provisions of the said incorporated Acts with respect to the purchase of land otherwise than by agreement.

Confirmation of title to lands purchased for purpose of prison.

45. When any lands have been purchased for the purposes of a prison in pursuance of this Act, such lands shall, at the expiration of five years from the date of a conveyance having been made to any person or body corporate on trust for such purposes, absolutely vest in that person or body corporate for all the estate or interest purported to be conveyed, to be held on trust for the aforesaid purposes ; and if before the expiration of the said term of five years any proceedings are taken on which judgment is obtained for the recovery of the possession of the said lands, then within two calendar months after judgment has been obtained, there shall be paid to the person obtaining such judgment, instead of the delivery of possession of the lands, all costs incurred in obtaining such judgment and compensation for the full value of his estate or interest in such lands, the amount of such compensation to be ascertained in manner provided by the said Lands Clauses Consolidation

Act, 1845, in case of disputed compensation as to land, and to be calculated on the basis of the value of the land at the time of the purchase thereof. Sect. 2.

* * * * *

47. No sale or purchase shall be made in pursuance of this Act by a prison authority, unless not less than three weeks' previous notice has been given in some one or more public newspaper or newspapers circulating within the district of the prison authority, of their intention to take into consideration the propriety of making such a sale or purchase at a time and place to be mentioned in such notice.

* * * * *

The Prison Act, 1877, while vesting prisons in the Prison Commissioners, exempted town halls, court-houses, and other rooms used for purposes other than those connected with the prison, but the Secretary of State was given power to purchase them. The following is the provision :—

49. Town halls, court-houses, or other rooms situate within the curtilage of a prison or forming part of a prison as defined by this Act, and which town halls, court-houses, or other rooms are used for the holding assizes or petty sessions, or for purposes other than those connected with the management of a prison, shall not be transferred to or vested in the Secretary of State under this Act, but it shall be lawful for the Secretary of State, with the consent of the Treasury, if he thinks it desirable, to purchase such town halls, court-houses, or other rooms so situate as aforesaid, from the local authority to whom the same belong, and for the purposes of such purchase the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, shall be incorporated with this section, and in the construction of the said incorporated Acts this Act shall be deemed to be the special Act and the Secretary of State shall be deemed to be the promoter of the undertaking.

* * * * *

Appropriation of court-houses situate within the precincts of a prison.

THE ALLOTMENTS ACT, 1887.

50 & 51 VICT. CAP. 48.

An Act to facilitate the provision of allotments for the labouring classes.
[16th September, 1888.]

* * * *

The law in respect to the purchase, taking, or hiring of lands for allotments is contained in this Act, in the Allotments Act, 1890 (53 & 54 Vict. c. 65), and in the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*. Some of the provisions in the last of these statutes are inconsistent with those in the earlier, and, although not expressly repealed, these earlier provisions must be treated as impliedly repealed.

According to section 2 of this Act, its provisions may be put into force by a written representation being sent to the sanitary authority, now the district council, by six parliamentary electors or six resident ratepayers stating that allotments are required for the labouring classes, and that they cannot be obtained on reasonable terms. The district council are then required to inquire into the facts and, if satisfied of their correctness, they are required to purchase or hire suitable land for the purpose and to let such land in allotments. The district council have also similar power to acquire lands for providing common pasture.

By the Allotments Act, 1890 (53 & 54 Vict. c. 65), it is provided that the persons representing that allotments are required may appeal to the county council if the district council have failed to acquire sufficient suitable land for allotments. The county council can, if satisfied of the inadequacy of the land acquired, then pass a resolution to that effect, and thereupon the powers and duties of the district council shall be transferred to the county council, who shall proceed to acquire the land (section 2), and the Act of 1887 will apply with the necessary modifications. The council shall also appoint a standing committee for this purpose, and they may make a provisional order, as mentioned in section 3, sub-section (2) of the 1887 Act, for the purchase of land on the recommendation of the standing committee, without any petition from the district council, and the county council shall be considered as the promoter of the order. The county council may, on the request of the district council, transfer to them any of the powers and properties under this Act in respect of their district.

The Local Government Act, 1894, s. 6, sub-sect. (3), provides that a parish council shall have the same power of making a representation with respect to allotments, as is conferred on parliamentary electors by the Allotments Acts, 1887 and 1890, but without prejudice to the powers of the electors, and sub-section (17) of section 9 enables the parish council to petition the county council, as provided by section 3 of the Allotments Act of 1890,

The following are the provisions in this Act as to acquiring land, but these, it will be seen, are modified by section 9 of the Local Government Act, 1894, *post* :—

3. (1.) For the purposes of the purchase of land by **Sect. 3.**
 agreement by a sanitary authority for allotments, section one **Acquisition of**
 hundred and seventy-eight of the Public Health Act, 1875, (a) **land for**
 and the Lands Clauses Consolidation Act, 1845, and the **purpose of**
 Acts amending the same, shall be incorporated with this **Act.**
 Act, except the provisions with respect to the purchase and **38 & 39**
 taking of land otherwise than by agreement, and with respect **Vict. c. 55.**
 to the provision to be made for affording access to the special **8 & 9 Vict.**
 Act. **c. 18.**

(2.) If a sanitary authority are unable by hiring or purchase by agreement to acquire suitable land sufficient for allotments under this Act for any district or parish at a reasonable price or rent and subject to reasonable conditions, such authority may petition the county authority of the county in which the district or parish is situate, and the county authority (b) (after such inquiry and procedure as provided in the sections hereinafter incorporated in this Act) may make a provisional order authorising the sanitary authority to put in force, as respects the land mentioned in the order, the provisions of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same with respect to the purchase and taking of land otherwise than by agreement.

(3.) The Local Government Board, on the application of any county authority, shall introduce into Parliament a Bill confirming provisional orders made under this Act by such county authority, and the sanitary authority petitioning for the order shall be considered as the promoters of such order.

(4.) For the purpose of the purchase of land under this section otherwise than by agreement, sections one hundred and seventy-six, (c) two hundred and ninety-six, and two hundred and ninety-seven, (c) of the Public Health Act, 1875, shall, so far as consistent with the tenour of this Act, be incorporated with this Act, and apply as if they were

Sect. 3. herein re-enacted, with the substitution of "the county authority" for "the Local Government Board," and of "any officer of the county authority appointed for the purpose of an inquiry" for "inspectors of the Local Government Board."

Provided that—

- (a.) Any question of disputed compensation shall be referred to the arbitration of a single arbitrator appointed by the parties, or if the parties do not concur in the appointment of a single arbitrator, then, on the application of either of them, by the Local Government Board, and the remuneration to be paid to the arbitrator appointed by the Local Government Board shall be fixed by that Board :
- (b.) If an arbitrator appointed for the purposes of this Act dies or becomes incapable to act before he has made his award, or fails to make his award within two months after he is appointed, his appointment shall determine, and the determination of the compensation shall be referred to another arbitrator appointed in like manner as if no arbitrator had been previously appointed : Provided always, that the same arbitrator may be re-appointed :
- (c.) An arbitrator appointed under this section shall be deemed to be an arbitrator within the meaning of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same, and the provisions of those Acts with respect to an arbitration shall apply accordingly ; and, further, the arbitrator, notwithstanding anything in the said Acts, shall determine the amount of the costs and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called

unnecessarily, and any other costs which he considers to have been incurred unnecessarily. Sect. 8.

(5.) In construing for the purposes of this section any section or Acts incorporated with this section, this Act, together with any Act confirming a provisional order under this section, shall be deemed to be the special Act, and the sanitary authority shall be deemed to be the local authority or the promoters of the undertaking, as the case requires, and the word "land" shall have the same meaning as in this Act.

(6.) Where land is purchased by a sanitary authority under this Act otherwise than by agreement, the following provisions shall apply :

(a.) The county authority shall not make a provisional order for purchasing any park, garden, pleasure-ground, or other land required for the amenity or convenience of any dwelling-house, or any land the property of a railway or canal company which is or may be required for the purposes of their undertaking :

(b.) The county authority shall, in making a provisional order for purchasing land, have regard to the extent of land held in the neighbourhood by any owner and to the convenience of other property belonging to the same owner, and shall so far as is practicable avoid taking an undue or inconvenient quantity of land from any one owner.

(7.) For the purpose of the hiring of land by a sanitary authority for allotments, any person or body of persons or body corporate authorised to sell land to the sanitary authority for the purposes of this Act may, without prejudice to any other power of leasing, lease land to the sanitary authority, without any fine or premium, for a term not exceeding thirty-five years.

Sect. 3. (8.) The county authority shall not make a provisional order for purchasing any right to coal or metalliferous ore.

* * * * *

(a) See *ante*, p. 514. Section 178 deals with land belonging to the Duchy of Lancaster.

(b) See section 16, *infra*, and note.

(c) Section 176 of the Public Health Act, 1875, provides that land may be taken compulsorily, under a provisional order, *ante*, p. 511, and sections 296 and 297 relate to inquiries and granting of provisional orders.

The latter part of sub-section (2) and the whole of sub-section (3) and the first part of sub-section (4) are inconsistent with the provisions of the Local Government Act, 1894. Section 9 thereof provides a different method of obtaining a provisional order (see *post*, p. 670), and the order does not require to be confirmed by Act of Parliament. Sub-section (3) of that section applies this procedure to any proceeding under the Allotment Acts. The provisos (a) (b) (c) of sub-section (4) and sub-sections (5) (6) (7) and (8) of this section of the Allotment Act, 1887, are incorporated in respect of the taking of land generally under the Local Government Act, 1894. See section 9, sub-sections (10) and (13), *post*, p. 672. In addition to the provision as to purchasing minerals in sub-section (8), the mining sections of the Railway Clauses Act, 1845, are to be incorporated in any order for the purchase of land under the Local Government Act, 1894, s. 9, sub-sect. (10).

Section 10 of the Local Government Act, 1894, enables the parish council to hire land compulsorily for allotments. In such cases the compensation is to be determined by an arbitrator to be appointed in accordance with the provisions of the above section of the Allotments Act, 1887. See sub-sections (2) (7) and (10) of section 10, *post*.

See the definitions of "allotment" and "land" in section 17, *infra*.

**Sale of
superfluous
or unsuit-
able land,**

11. (1.) Where the sanitary authority are of opinion that any land acquired by them in pursuance of this Act or any part thereof is no longer needed for the purpose of allotments, or that any other land more suitable for such purpose is available, they may, with the sanction of the county authority, sell or let such land or part, or exchange the same for other land more suitable for the said purpose, and may pay or receive money for equality of exchange.

(2.) The proceeds of a sale under this section and any money received by the sanitary authority on any such exchange as aforesaid by way of equality of exchange, shall be applied in discharging, either by way of a sinking fund or otherwise, the debts and liabilities of the sanitary authority in

respect of the land acquired under this Act, or in acquiring, **Sect. 11.**
 adapting, and improving other land for allotments under this
 Act, and any surplus remaining may be applied for any
 purpose for which capital money may be applied, and which
 is approved by the Local Government Board; and the
 interest thereon (if any) and any money received from the
 letting of the land may be applied in acquiring other land for
 allotments, or shall be applied in like manner as receipts from
 allotments under this Act are applicable: Provided that any
 such proceeds, surplus, interest, and money shall, in the case
 of a rural sanitary district, be credited to or applied for the
 benefit of the parish for which the land was purchased.

(3.) Sections one hundred and twenty-eight to one hundred
 and thirty-two (both inclusive) of the Lands Clauses Consoli-
 dation Act, 1845 (relating to the right of pre-emption of
 superfluous lands), (a) shall apply upon any sale by a sanitary
 authority in pursuance of this section of any land, whether
 because it is no longer needed for the purpose of allotments,
 or because other land more suitable for the purpose is avail-
 able, but save as aforesaid, the provisions of the Lands
 Clauses Consolidation Act, 1845, with respect to the sale of
 superfluous lands shall not be deemed to be incorporated in
 this Act, or in any provisional order made under this Act.

(a) *Ante*, pp. 282—286.

This section is incorporated in the Local Government Act, 1894,
 s. 9, sub-sect. (13), in respect of land taken for all the purposes of that
 Act.

12. Where it appears to any sanitary authority that, as **Power to**
 regards their district, if urban, or any parish in their district, **make**
 if rural, land can be acquired for affording common pasture **scheme**
 at such price or rent that all expenses incurred by the sanitary **for provi-**
 authority in acquiring the land and otherwise in relation to **sion of**
 the land when acquired may reasonably be expected to be **common**
 recouped out of the charges paid in respect thereof, and that **pasture.**
 the acquisition of such land is desirable in view of the wants
 and circumstances of the labouring population, such sanitary
 authority may submit to the county authority for the county

Sect. 12. in which the district or parish is wholly or partly situate a scheme for providing such common pasture, and the county authority, if satisfied of the expediency of such scheme, may by order authorise the sanitary authority to carry it into effect, and upon such order being made this Act shall, with the necessary modifications, apply in like manner as if "allotments" in this Act included common pasture, and "rent" included a charge for turning out an animal.

Provided that the regulations made under this Act may extend to regulating the turning out of animals on the common pasture, to defining the persons entitled to turn them out, the number to be turned out, and the conditions under which animals may be turned out, and fixing the charges to be made for each animal, and otherwise to regulating the common pasture.

The expression "allotments" in section 9 of the Local Government Act, 1894, includes common pasture (sub-section 16) where authorised to be acquired under the Allotments Act, 1887, but apparently land cannot be hired for common pasture under section 10 of the Local Government Act, 1894.

* * * * *

Definition
of county
authority.

16. For the purposes of this Act "county authority" shall be any representative body elected by the inhabitants of the county which may be established under any Act of any future session of Parliament, and until such representative body is established the powers and duties of the county authority under this Act shall be exercised and performed by the Local Government Board, and the provisions of this Act and of the enactments incorporated with this Act shall accordingly be construed with the necessary modification.

The county authority is now the county council (Local Government Act, 1888). By section 34, sub-section (7), in the case of county boroughs, the powers and duties under this Act shall continue to be exercised by the Local Government Board.

Defini-
tions.

17. In this Act, unless the context otherwise requires—
The expression "allotment" includes a field garden.

The expressions "urban district" and "rural district" Sect. 17. mean respectively an urban and rural sanitary district within the meaning of the Public Health Act, 1875.

The expression "sanitary authority" means the urban sanitary authority of an urban sanitary district and the rural sanitary authority of a rural sanitary district within the meaning of the Public Health Act, 1875.(a)

The expression "land" includes pasture, arable, and other land, and any right of way or easement.

(a) These are now urban and rural district councils (Local Government Act, 1894, s. 21).

LLOYD'S SIGNAL STATIONS ACT, 1888.

51 & 52 VICT. CAP. 29.

An Act to confer powers on Lloyd's with respect to signal stations and telegraph communication, and for other purposes.
[13th August, 1888.]

34 & 35
Vict.
c. xxi.

WHEREAS it is expedient for the purpose of assisting in the preservation of life and in the interests of trade and navigation that the society and corporation incorporated under the name of "Lloyd's" by section three of Lloyd's Act, 1871 (in this Act referred to as "the society"), be authorised to acquire compulsorily, with the sanction of the Board of Trade, or by agreement, land for the purpose of signal stations and signal houses, and to arrange for telegraphic communication therewith, at such places on or near the coast of the British Islands as they think fit:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Sect. 1. 1. This Act may be cited as Lloyd's Signal Stations Act, Short title. 1888.

Lloyd's to
have power
to establish
signal
stations
with tele-
graphic
communi-
cations.

2. The society may, subject to the restrictions and conditions contained in this Act, execute the following works and do the following things, namely :—

- (1.) Establish signal stations and erect and place signal houses with all requisite works, roads, appurtenances, and appliances at such places on the coast of the British Islands, or any islands, shoals,

or rocks lying near thereto, as they think fit, and maintain and work the same with a proper staff of keepers, officers, and servants, and from time to time alter or remove any such signal houses or discontinue any such signal stations: Sect. 2.

- (2.) For the purpose of connecting any of the said signal stations or signal houses with each other or with postal telegraph stations, enter into arrangements with the Postmaster-General for the placing, maintaining, and working of wires for the purpose of telegraphic or telephonic communication by him upon such terms and conditions as he shall prescribe :
- (3.) Acquire by compulsion or agreement and hold any lands which may from time to time be necessary for any of the above purposes or for the purpose of providing residences and suitable gardens for signalmen and signal-house keepers. Provided that the extent of land to be acquired by compulsion under this Act at any one place shall not exceed two acres exclusive of the necessary means of approach ; but nothing in this Act shall empower the society to take any part of a railway or canal :
- (4.) When necessary, but subject to the provisions of the Lands Clauses Act with respect to the sale of superfluous lands, dispose by way of sale, lease, or otherwise, of any lands acquired by them for any of the purposes aforesaid.

3. (1.) With a view to the purchase of land for the purposes of this Act the Lands Clauses Acts, except the provisions relating to access to the special Act, and except any provisions inconsistent or not applicable to the objects and purposes of this Act, shall be incorporated in this Act, and in construing the Lands Clauses Acts for the purposes of this Act this Act and any Act confirming an order made in pursuance of this

Incorporation of
Lands
Clauses
Acts.

Sect. 3. Act shall be deemed to be the special Act, and the society shall be deemed to be the promoters of the undertaking, and the word "land" shall include easements and rights in and over land.

(2.) The society, before putting in force any of the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, shall—

(A.) Publish once at the least in each of three consecutive weeks in the course of the months of September, October, and November in some one and the same newspaper circulating in the locality an advertisement describing shortly the object for which the land is proposed to be taken, naming a place in the neighbourhood of the land proposed to be taken where a plan of the land may be seen at all reasonable hours, and stating the quantity of the land; and

(B.) During the month next following the month in which the last of the advertisements is published, serve a notice in manner mentioned in this section on every owner or reputed owner, lessee or reputed lessee, and occupier of the land, so far as such owners, lessees, and occupiers can be reasonably ascertained, defining in each case the land intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect to the taking of the land.

(3.) (i.) Service of a notice on a person may be made by delivery of the notice to him personally or by leaving the notice at his usual or last known place of abode, or by forwarding it by post in a registered letter addressed to his usual or last known place of abode.

(ii.) A notice required to be served on a number of persons having any right in common in, over, or on land, may be

served on any three or more of those persons on behalf of all of such persons, and should there be any bailiff, steward, reeve, or other duly appointed officer or trustee of or charged with the care or management of such land on behalf of such persons, notice shall also be served on such bailiff, steward, reeve, or other officer or trustee.

(iii.) Where a notice is served by registered letter, it shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and the production of the post office receipt for such letter duly stamped shall be sufficient evidence of the due delivery of such letter, provided it shall appear that the same was sufficiently and properly directed, and that the same was not returned by the post office as undelivered.

(iv.) Where a person required to be served is absent abroad or cannot be found, the notice may be served on his agent.

(4.) Upon compliance as respects any land with the provisions contained in this section with respect to advertisements and notices, the society may, if they think fit, present a petition to the Board of Trade. The petition shall describe the land, and state the purposes for which it is required, and the names of the owners and lessees or reputed owners or lessees, and occupiers of land who have assented, dissented, or are neuter in respect of the taking of the land, or who have returned no answer to the notice, and shall pray for an order authorising the society with reference to the land to put in force the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, and shall be supported by such evidence as the Board of Trade may require.

(5.) If, on consideration of the petition and proof of the publication of the proper advertisements and service of the proper notices, the Board of Trade think fit to proceed with

Sect. 3. the case, they may, if they think fit, appoint some person to inquire in the locality in which the land is situate respecting the propriety of making the order prayed for, and also direct that person to hold a public inquiry, and if a public inquiry is held, the person holding the same shall have the same powers as an inspector appointed under the Merchant Shipping Act, 1854, and the Acts amending the same.

17 & 18
Vict.
c. 104.

(6.) After such consideration and proof, and if there is an inquiry after receiving the report made upon such inquiry, the Board of Trade may make a provisional order authorising the society to put in force with reference to the land referred to in the petition, or such part thereof as is described in the order, the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement or any of them, and that either absolutely or with such conditions and modifications as they may think fit, and it shall be the duty of the society to serve a copy of any order so made in the manner and on the persons in which and on whom notices in respect of the land to which the order relates are required by this Act to be served.

(7.) A provisional order so made shall not be of any validity unless the same has been confirmed by Act of Parliament ; and it shall be lawful for the Board of Trade as soon as conveniently may be to obtain such confirmation. If, while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against the order, the Bill, so far as it relates to the order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills, and the Act confirming the order shall be deemed to be a public general Act of Parliament.

(8.) An order made in pursuance of this section when confirmed by Parliament with such modifications as seem fit to Parliament shall have full effect.

(9.) The Board of Trade, in case of refusing or modifying the order prayed for, may make such order as they think fit

for the allowance of the reasonable costs, charges, and expenses which any person whose land was proposed to be taken has properly incurred in opposing the order. **Sect. 3.**

(10.) All costs, charges, and expenses incurred by the Board of Trade in relation to any order or proposed order under this section, and all costs, charges, and expenses of any person which are so allowed by the Board of Trade as aforesaid, shall be a charge on the funds of the society and be paid to the Board of Trade and to that person respectively by the society within fourteen days after demand.

(11.) Any land purchased in pursuance of any order under this section confirmed by Act of Parliament shall be purchased within one year after the passing of such Act.

(12.) The provisions of this Act with respect to the purchase of land by the society shall extend to the purchase of land of which the society are lessees or occupiers in like manner as if another person were for the time being lessee or occupier of the land, save that the provisions with respect to the notices to and the assent or dissent of and the service of a copy of the order on lessees and occupiers shall not apply so far as respects the society, and save that after an order under this section for purchasing the land is confirmed by Parliament the society may give notice to and purchase the estate, right, or interest of some one or more only of the parties interested in the land, but in that case they shall, if any other of such parties by notice in writing so requires them, purchase the estate, right, or interest in the land of that party.

4. Persons empowered by the Lands Clauses Consolidation Act, 1845, to sell and convey or release lands may, if they think fit, subject to the provisions of that Act and of the Lands Clauses Consolidation Acts Amendment Act, 1860, and of this Act, grant to the society any easement, wayleave, right, or privilege required for the purposes of this Act in, over, or affecting any such lands, and the provisions of the Power to take easements by agreement. 8 & 9 Vict. c. 18. 23 & 24 Vict. c. 106.

Sect. 4. said Acts with respect to lands and rentcharges, so far as the same are applicable in this behalf, shall extend and apply to such grants and to such easements, wayleaves, rights, and privileges as aforesaid respectively.

* * * * *

Sections 5—10 of the Act contain savings in respect of lands held by the Admiralty and War Office, the Post Office and other Government Departments, and by lighthouse authorities, which lands can only be entered upon or taken by agreement. The bed and shores of the Thames are not to be interfered with except with the consent of the conservators, nor the foreshores of the country without the consent of the Board of Trade.

Lands of the Duchies of Lancaster and Cornwall and of the Crown are also excluded from the compulsory powers of the Act. The works of any undertakers within the meaning of the Electric Lighting Act, 1882, are not to be interfered with.

THE LOCAL GOVERNMENT ACT, 1888.

51 & 52 VIOT. CAP. 41.

An Act to amend the Laws relating to Local Government in England and Wales and for other purposes connected therewith.

[13th August, 1888.]

* * * * *

65. (1.) A county council may, from time to time, for **Sect. 65.** the purpose of any of their powers and duties, including those which are to be executed through the standing joint committee, acquire, purchase, or take on lease, or exchange any lands or any easements or rights over or in land, whether situate within or without the county, and may acquire, hire, erect, and furnish such halls, buildings, and offices as they may from time to time require, whether within or without their county. Power to acquire lands.

(2.) For the purpose of the purchase, taking on lease, or exchange of such lands, sections one hundred and seventy-six, one hundred and seventy-seven, and one hundred and seventy-eight of the Public Health Act, 1875,^(a) shall apply as if they were herein re-enacted, and in terms made applicable to the county council.

(3.) Where the county council, with the consent of the Local Government Board, sell any land, the proceeds of such sale shall be applied in such manner as the said Board sanction towards the discharge of any loan of the council, or otherwise, for any purpose for which capital may be applied by the council.

(a) See *ante*, pp. 511—514. These sections incorporate the Lands Clauses Acts. Compulsory powers may be obtained by provisional order.

“For the purpose of any of their powers.”—By section 64 the existing county buildings will pass to the county council, subject to the rights of the quarter sessions and justices to hold Courts in them.

Sect. 65. The purposes for which land may be acquired under this Act are not numerous. Section 11 gives them the powers of a highway board as to main roads, which powers include the taking of land to widen them. See the Highway Act, 1835, in Appendix. County councils are, however, empowered by various subsequent Acts to take land for the purposes of these Acts, as, for example, The Allotments Act, 1887. See *ante*, p. 561; The Housing of the Working Classes Act, 1890, *post*, p. 598; The Isolation Hospitals Act, 1893, *post*, p. 668; and The Diseases of Animals Act, 1894, *post*. These statutes, however, contain provisions in respect of the purchase and taking of land. For the compulsory purchase a provisional order is almost invariably required. Land may also be purchased by agreement under the Small Holdings Act, 1892.

* * * * *

Incorporation of county council.

79. (1.) The council of each county shall be a body corporate by the name of the county council, with the addition of the name of the administrative county, and shall have perpetual succession and a common seal and power to acquire and hold land for the purposes of their constitution without license in mortmain.

THE ARBITRATION ACT, 1889.

52 & 53 VICT. CAP. 49.

An Act for amending and consolidating the Enactments relating to Arbitration. [26th August, 1889.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Construction.—This Act repeals the enactments mentioned in the second schedule (see note to section 26, *post*, p. 596) ; but inasmuch as several of these are re-enacted in substance, expressions in these repealed Acts which have received judicial construction will be construed according to these previous decisions. See *Hodgson v. Bell*, 24 Q. B. D. 302, at p. 305.

If any part of the Arbitration Act, 1889, is enacted in the same terms as those used in the Common Law Procedure Act, then if decided cases have determined the construction to be placed on the Common Law Procedure Act, the Court must adhere to those decisions when called upon to place a construction upon that part of the Arbitration Act in which the same language is used with regard to the same subject-matter. *In re Keighley, Mazsted and Company and Durant and Company* [1893], 1 Q. B. 405, 409. But where larger words are used in this than in the previous Act, the rule is that such larger words were used intentionally and must have a meaning given to them. *Hurblatt v. Barnett and Company* [1893], 1 Q. B. 77, 79.

Application of Act.—This Act applies to arbitrations under all statutes in so far as it is not inconsistent with them (section 24), and it applies to every arbitration commenced after the commencement of this Act (1st January, 1890) under any agreement or order made before the commencement, except pending arbitrations. Section 25, and see *In re Williams and Stepney* [1891], 1 Q. B. 257.

*References by Consent out of Court.***Sect. 1.**

1. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court or a judge, and shall have the same effect in all respects as if it had been made an order of Court.

Submission to be irrevocable and to have effect as an order of court.

“Submission.”—See definition, section 27, *pos*, p. 596.

Sect. 1. A submission to arbitration under section 25 of the Lands Clauses Consolidation Act, 1845, was held to be a submission by consent under the Common Law Procedure Act, 1854. *Rhodes v. Airedale Drainage Commissioners*, 1 C. P. D. 402, and cases cited to section 25 of the Lands Clauses Consolidation Act, 1845, in note "A submission to arbitration," *ante*, p. 64. It will no doubt be held to be a submission by consent under this Act.

"**Shall be irrevocable.**"—This is already provided by section 25 of the Lands Clauses Consolidation Act, 1845. That section gives no power to a Court to revoke, but such power may now exist under this section. See section 25, note "Revocation," *ante*, p. 65.

In determining whether to revoke a submission or not the Court will be bound by the previous decisions, and can only revoke on the grounds for which Courts had power to revoke when the submission was made a rule of Court. *In re Smith and Nelson*, 25 Q. B. D. 545, 530; and see a recent case, *Re Baring Brothers and Company and Doulton and Company*, 61 L. J. Q. B. 704.

"**Court or a Judge.**"—Or Master, see section 21 and Order 54, r. 12a.

"**Same effect as an order of Court.**"—This does not make the arbitration a "proceeding in the Court" within the meaning of Order 37, r. 5, of the Rules of the Supreme Court, and the Court has no power to order the issue of a commission for the examination of witnesses in an arbitration, nor does it give the Court power to order a party to appoint an arbitrator under an agreement to refer disputes to three arbitrators, one to be appointed by each of the parties and the third by the two so appointed, where one of the parties refuses. *Smith and Nelson's Arbitration*, 25 Q. B. D. 545.

Compare 3 & 4 Will. 4, c. 42, s. 39, and Common Law Procedure Act, 1854, s. 17.

Provisions
implied in
submis-
sions.

2. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule to this Act, so far as they are applicable to the reference under the submission.

"**A Submission.**"—See definition, section 27 and note to section 1. In submissions made before the Act these provisions in the First Schedule are deemed to be included, although they may add to the agreement between the parties. *In re Williams and Steyn* [1891], 1 Q. B. 257.

The Lands Clauses Act, 1845 (sections 25—37), contains provisions of a somewhat similar nature to those in the schedule, and these provisions will only be deemed to be included in so far as they are not at variance with those already provided in that statute. See notes to the provisions in the First Schedule.

THE FIRST SCHEDULE.

PROVISIONS TO BE IMPLIED IN SUBMISSIONS.

a. If no other mode of reference is provided, the reference shall be to a single arbitrator.

Section 25 of the Lands Clauses Consolidation Act, 1845, provides for the mode of reference.

b. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

Section 27 of the Lands Clauses Consolidation Act, 1845, provides that the two arbitrators shall appoint an umpire "before they enter upon the matters referred to them." This provision might perhaps apply if the umpire appointed refused to act.

See note to section 27, "Nominate and appoint an umpire."

c. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

Under the Lands Clauses Acts, the arbitrators have twenty-one days within which to award, but they may extend it to three months (Lands Clauses Consolidation Act, 1845, ss. 23 and 31).

As to the power of the Court to enlarge the time, see section 9, *post*.

Cf. Common Law Procedure Act, 1854, s. 15.

d. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

By section 31 of the Lands Clauses Consolidation Act, 1845, a similar provision is made if the arbitrators allow their time or extended time to expire. Section 27 provides that the umpire is to decide matters on which they differ. As there is no provision as to how this is to be signified to the umpire, this proviso will doubtless apply.

Cf. Common Law Procedure Act, 1854, s. 15.

e. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the

Sect. 2. umpire by any writing signed by him may from time to time enlarge the time for making his award.

Under the Lands Clauses Consolidation Act, 1845, the umpire has three months to make his award from the date when the duty devolves upon him (section 23 of that Act, and note "For three months," *ante*, p. 58), and has no power to enlarge it, as the matter must then be decided by a jury unless the parties consent.

As to the power of the Court to enlarge the time, see section 9.

f. The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

See section 7 of this Act, and section 32 of the Lands Clauses Consolidation Act, as to examining witnesses. The examination under the Lands Clauses Act is not compulsory. See notes to section 32, *ante*, p. 70.

g. The witnesses on the reference shall, if the arbitrators or umpire thinks fit, be examined on oath or affirmation.

See section 32 of the Lands Clauses Consolidation Act, 1845, and as to issuing writs of subpoena to compel the attendance of witnesses, see sections 8 and 18 of this Act.

h. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

Notwithstanding this proviso the Court has power to remit the award under section 10 of this Act.

Under the Lands Clauses Acts the award is only binding as to the amount and not as to the claimant's right to compensation. See section 23 of the Lands Clauses Consolidation Act, 1845, and note "The same shall be so settled," *ante*, p. 57.

i. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

Provision as to costs in arbitrations under the Lands Clauses Acts is made in section 34 of the Lands Clauses Consolidation Act, 1845,

ante, p. 73, and as to taxation, in the Lands Clauses Act, 1895, *post*, Sect. 2. p. 682.

This proviso would no doubt apply to cases of arbitration under agreements as to the value of land to be taken where the Lands Clauses Acts do not apply.

If the arbitrator or umpire settle the costs he must do so in his award, and may include his own costs therein (*re Stephens and Liverpool and London and Globe Insurance Company*, 36 Sol. Journ. 464), but if he does not settle the costs they are liable to be taxed, including his own charges. *In re Prebble and Robinson* [1892], 2 Q. B. 602.

3. Where a submission provides that the reference shall be to an official referee, any official referee to whom application is made shall, subject to any order of the Court or a judge as to transfer or otherwise, hear and determine the matters agreed to be referred. Reference to official referee.

This is a substantial re-enactment of the Judicature Act, 1884, s. 11.

4. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings. Power to stay proceedings where there is a submission.

Compare Common Law Procedure Act, 1854, s. 11.

Application to Lands Clauses Act.—Questions of disputed compensation under the Lands Clauses Acts must be decided according to the methods therein provided. If a person makes a claim upon promoters and arbitration is insisted on under these Acts, the promoters cannot in any proceedings before the Court prevent the arbitrator from dealing with the question, because they allege plausibly or not that the claimant has no right to compensation, and the same is true under the Public Health Act, 1875. *Brierley Hill Local Board v. Pearsall*, 9 A. C.

Sect. 4. 895 ; and see note "The same shall be so settled," to section 23 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 57. Similarly if notice to treat has been given, the landowner has no action of specific performance until the amount has been settled. If he brought such an action the defendants might possibly stay the proceedings as provided in this section ; but they might also have the statement of claim struck out, as disclosing no cause of action.

Time to apply.—An application under this section must be made before taking any other step in the action. Thus an application for a stay until security for costs be given is "a step in the proceedings," such as to disentitle the defendant from proceeding under this section (*Adams v. Catley*, 66 L. T. 687), so is delivery of a defence (*West London, &c., Company v. Abbott*, 29 W. R. 584). A "step in the proceedings," means some application to the Court by summons or motion, and does not include an application from one party to the other, as, for example, requiring the delivery of a statement of claim. *Ives and Barker v. Willans* [1894], 2 Ch. 478, or writing to the plaintiff asking for further time to plead. *Brighton Marine, &c., Company v. Woodhouse* [1893], 2 Ch. 486. The taking out of a summons for further time to deliver the defence would, however, be a step in the action. *Bartlett v. Ford's Hotel Company*, 1895, 1 Q. B. 850.

"Court or a Judge."—Includes master, section 21, *infra*, and Order 64, r. 12, A.

Power for the court in certain cases to appoint an arbitrator, umpire, or third arbitrator.

5. In any of the following cases :—

- (a.) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not after differences have arisen concur in the appointment of an arbitrator :
- (b.) If an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy :
- (c.) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him :
- (d.) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy :

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator. Sect. 5.

If the appointment is not made within seven clear days after the service of the notice, the Court or a judge may, on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

In case (a) if the parties do not concur in the appointment of a single arbitrator, the procedure under the Lands Clauses Acts is according to section 25 of the Lands Clauses Consolidation Act, 1845.

In case (b) if two arbitrators are appointed, and one dies or becomes incapable, section 26 of the Lands Clauses Consolidation Act, 1845, makes provision for the appointment of another, and if this not done the other may proceed alone. If one refuse section 30 of that Act provides that the other may proceed alone. If a single arbitrator die or become incapable, section 29 provides that the matter shall proceed *de novo*.

In case (c) if the arbitrators fail to appoint, the Board of Trade is empowered to do so. Lands Clauses Consolidation Act, 1845, s. 28, and Lands Clauses (Umpire) Act, 1883, s. 2.

In case (d), section 27 of the Lands Clauses Consolidation Act, 1845, provides for the arbitrators appointing a new umpire, in case the one appointed die or become incapable. There is, however, no provision if he refuse to act, so that in such a case the provisions of this section might be applicable. They are apparently not applicable where there is any machinery whereby an appointment can be obtained; if there is no such machinery, the judge may appoint. See *In re Wilson and Sons v. Eastern Counties Navigation Company* [1892], 1 Q. B. 81.

"The Court or a Judge may."—"May" in this section means generally "must," and as a general rule where the conditions exist under which this section is applicable, the Court or a judge has no discretion to refuse to appoint. *Eyre and the Corporation of Leicester* [1892], 1 Q. B. 136; *Aitken v. Batchelor*, 62 L. J. Q. B. 193.

The procedure under this section is by summons, which may be before a master in chambers. Section 21, *infra*.

Compare Common Law Procedure Act, 1845, s. 12.

6. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention—

(a.) If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;

Power for parties in certain cases to supply vacancy.

- Sect. 6.** (b.) If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent :

Provided that the Court or a judge may set aside any appointment made in pursuance of this section.

Cf. Common Law Procedure Act, 1854, s. 13.

Similar provisions exist in the Lands Clauses Acts, but without the proviso. See note to last section.

Powers of arbitrator.

7. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power—

- (a.) To administer oaths to or take the affirmations of the parties and witnesses appearing ; and
- (b.) To state an award as to the whole or part thereof in the form of a special case for the opinion of the Court ; and
- (c.) To correct in an award any clerical mistake or error arising from any accidental slip or omission.

“To administer oaths.”—A similar power is given under section 33 of the Lands Clauses Act, 1845, *ante*, p. 70. See note thereto “May examine the parties or their witnesses on oath.”

As to obtaining the attendance of witnesses, see sections 8 and 18 of this Act, *infra*.

As to punishment for giving false evidence, see section 22, *infra*.

For form of oath, see Appendix.

“Take the affirmations.”—By the Oaths Act, 1888, s. 1, “Every person upon objecting to being sworn and stating as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation.”

The arbitrator should learn from the person objecting whether he objects on either of these grounds. If he does not, he must be sworn. Sect. 7.

For form of affirmation, see Appendix.

(b) "In the form of a Special Case."—Compare Common Law Procedure Act, 1854, s. 5. Under that section the arbitrator had power to state his award in the form of a special case, in cases under the Lands Clauses Acts. *Rhodes v. Airedale Drainage Commissioners*, 1 C. P. D. 402; *Bidder v. North Staffordshire Railway Company*, 4 Q. B. D. 412. See note to section 25, "A submission to arbitration," p. 64. For a recent case, see *Page v. Kettering Waterworks Company*, 8 "Times" L. R. 228.

Section 19 of this Act, *infra*, enables an arbitrator to state a special case for the opinion of the Court at any stage of the proceedings.

Appeal.—An appeal lies from the decision of the Court when the award is stated in the form of a special case, as the arbitrator has then exhausted his powers and the opinion of the Court will determine the rights of the parties. *In re Kirkleatham Local Board and Stockton and Middlesborough Water Board* [1893], 1 Q. B. 375, 380. An appeal, however, did not lie under section 19. *In re Knight and Tabernacle Permanent Building Society* [1892], 2 Q. B. 613. See now Supreme Court of Judicature (Procedure) Act, 1894, s. 1, and notes to section 19, *infra*, p. 592.

Practice.—The special case should be filed in the writ, appearance and judgment department of the central office of the High Court, where a reference number will be given, and which should appear in all subsequent proceedings. The fee for filing is 1*l*. See Orders as to Court Fees, 1884.

Costs.—The Court has no jurisdiction over the costs when the award is stated in the form of a special case, as such costs are incidental to the arbitration, and, therefore, fall under the provision of section 34 of the Lands Clauses Act, 1845. *Re Holliday and Mayor of Wakefield*, 20 Q. B. D. 699, 720, see in House of Lords (1891), A. C. 81, p. 107. A similar rule would apply in the event of a special case being stated under section 19. *In re Knight and Tabernacle Permanent Building Society* [1892], 2 Q. B. 613.

(c) "To correct in an award," &c.—Section 37 of the Lands Clauses Consolidation Act, 1845, provides that no award shall be set aside for irregularity or matter of form, p. 80; and note "Irregularity or error in matter of form."

8. Any party to a submission may sue out a writ of *subpœna ad testificandum*, or a writ of *subpœna duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action. Witnesses
may be
sum-
moned by
subpœna.

Cf. section 2, Sched. I. (g), and for witnesses in Scotland or Ireland, for witnesses in prison, see section 18, and the Lands Clauses Consolidation Act, 1845, s. 32, as to examining witnesses, and calling for the production of documents.

Sect 8. "May sue out a writ of subpoena."—Under this section these writs issue as of course without any order being required, and are obtained at the writ department of the central office.

The Court has no power to order a commission to examine witnesses. *Re Shaw and Ronaldson Arbitration* [1892], 1 Q. B. 91; *Re Dreyfus and Paul Arbitration*, 37 Sol. Journ. 357.

Procedure.—The procedure as to writs of *subpoena* is governed by the rules of Supreme Court, Order 37, rr. 26—34. The following regulate the procedure under this section.

26. Where it is intended to sue out a *subpoena*, a *præcipe* for that purpose, in the Form No. 21 in Appendix G., and containing the name or firm and the place of business or residence of the solicitor intending to sue out the same, and, where such solicitor is agent only, then also the name or firm and place of business, or residence of the principal solicitor, shall in all cases be delivered and filed at the central office.

Form 21 in Appendix G. is as follows :—

Seal writ of *subpoena* , on behalf of the , directed to
 . Returnable .
 Dated the day of , 18 .
 (Signed)
 (Address)
 Solicitor for .

27. "A writ of *subpoena* shall be in one of the Forms 1—7 in Appendix J., with such variations as circumstances may require."

The following are the forms in Appendix J., which will be available for arbitrations. The headings will, however, require to be altered to suit the arbitration. The usual heading is "In the Matter of an Arbitration between A. B. and C. D. And in the matter of the Arbitration Act, 1889."

No. 1.

Subpoena ad Testificandum (General Form) (O. 37, r. 27).

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Division.

Between

, Plaintiff,

and

, Defendant.

VICTORIA, by the grace of God, &c., to [*the names of three witnesses may be inserted*] greeting: We command you to attend before at
 on day the day of , 18 , at the hour
 of in the noon, and so from day to day until the above
 cause is tried, to give evidence on behalf of the plaintiff [*or defendant*].

Witness, &c.

No. 2.

Sect. 8.

Habeas Corpus ad Testificandum (O. 37, r. 27).

[*Heading as in Form 1.*]

VICTORIA, by the grace of God, &c., to the [keeper of our prison at].

We command you that you bring _____, who it is said is detained in our prison under your custody _____, before _____ at _____ on _____ day the _____ day of _____ at the hour of _____ in the noon, and so from day to day until the above action is tried, to give evidence on behalf of the _____. And that immediately after the said _____ shall have so given his evidence you safely conduct him to the prison from which he shall have been brought.

Witness, &c.

This writ was issued, &c.

This writ will not issue in an arbitration without an order of a Court, a judge or a master. See Arbitration Act, section 18, *infra*.

No. 3.

Subpœna Duces Tecum (General Form) (O. 37, r. 27).

[*Heading as in Form 1.*]

VICTORIA, by the grace of God, &c., to [*the names of three witnesses may be inserted*] greeting : We command you to attend before _____ at _____, on _____ day the _____ day of _____, 18____, at the hour of _____ in the _____ noon, and so from day to day until the above cause is tried, to give evidence on behalf of the _____, and also to bring with you and produce at the time and place aforesaid [*specify documents to be produced*].

Witness, &c.

The particular documents required should be specified.

Witness in Scotland or Ireland.—When leave is given under section 18 of the Arbitration Act, the forms will be the same as Nos. 1 and 3, but adding after the name of the witness, "Wherever you shall be in our United Kingdom," and at the foot of the writ, "Notice. Take notice that this writ was ordered to be issued by an Order of Her Majesty's High Court of Justice, dated _____ day of _____ 189____, pursuant to the statutes, 17 & 18 Vict. c. 34, and 52 & 53 Vict. c. 49."

29. Every *subpœna* other than a *subpœna duces tecum* shall contain three names where necessary or required, but may contain any larger number of names.

The fee is 5s. for each *subpœna* and if it contain more than three names for each set of three.

Sect. 8. 30. No more than three persons shall be included in one *subpoena duces tecum* and the party suing out the same shall be at liberty to sue out a *subpoena* for each person if it shall be deemed necessary or desirable.

31. In the interval between the suing out and service of any *subpoena* the party suing out the same may correct any error in the names of parties or witnesses, and may have the writ re-sealed upon leaving a correct *præcipe* of such *subpoena* marked with the words "altered and re-sealed," and signed with the name and address of the solicitor suing out the same.

32. The service of a *subpoena* shall be effected by delivering a copy of the writ, and of the indorsement thereon, and at the same time producing the original writ.

33. Affidavits filed for the purpose of proving the service of a *subpoena* upon any defendant must state when, where, and how, and by whom, such service was effected.

34. The service of any *subpoena* shall be of no validity if not made within twelve weeks after the *teste* of the writ.

Power to
enlarge
time for
making
award.

9. The time for making an award may from time to time be enlarged by order of the Court or judge, whether the time for making the award has expired or not.

Cf., Common Law Procedure Act, 1854, s. 15.

Under the Lands Clauses Act, 1845, ss. 23 and 31, the arbitrators have twenty-one days in which to award, but this may be extended to three months. An umpire has three months from the date when the duty devolves upon him. Section 23, p. 58, note "For three months."

The provisions of section 15 of the Common Law Procedure Act, 1854, as to giving the Court power to enlarge the time for making an award were held to apply to arbitrations under the Lands Clauses Acts (*In re Dare Valley Railway Company*, 4 Ch. 554), but the court declined to do so where there had been great delay. S. C.

In the case of arbitrations under the Public Health Act, 1875, the Court has no power to extend the time beyond two months, the period limited by section 180, sub-section (9), *ante*, p. 515. *Re Mackenzie and the Ascot Gas Company*, 17 Q. B. D. 114; *In re Yeaton Local Board and Yeaton Waterworks Company*, 41 Ch. D. 52.

When the Court has power to enlarge the time, it can do so after the award has been made, and the effect of the enlargement is the same as an enlargement by consent, namely, to ratify what had previously been done by the arbitrator without authority and to render the award valid. *Lord v. Lee*, L. R. 3 Q. B. 404. It may be enlarged beyond the time mentioned in the agreement. *In re Denton and Strong*, L. R. 9 Q. B. 117; *May v. Harcourt*, 13 Q. B. D. 690.

By Order 64, r. 14A, of the Rules of the Supreme Court, it is provided that: "Where the time for making an award is enlarged, the enlargement shall be deemed to be for one month unless a different time is specified in the order."

"Court or a Judge."—By Order 54, rule 12A, of the Rules of the Supreme Court, a master of the Supreme Court may exercise all the jurisdiction and powers conferred upon the court or a judge by the Arbitration Act, 1889, and see section 21. **Sect. 9.**

10. (1.) In all cases of reference to arbitration the Court or a judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire. **Power to remit award.**

(2.) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order.

"The Court or a Judge" includes a master. Rules of the Supreme Court, Order 54, r. 12A, and see section 21. The application will be by summons before a master.

"May remit the Matters referred."—A similar power was given to the Court by the Common Law Procedure Act, 1854, s. 8. Prior to that Act, the Court could only refer back arbitrations when the submission contained a clause enabling them to do so. Under section 8, however, all awards could be remitted whether the submission contained such a clause or not (*Mills v. Bowyer*, 3 K. & J. 66), and in the case of an arbitration under the Lands Clauses Acts, GIFFARD, V.C., referred the matter back to an arbitrator, who admitted he had made a mistake. *In re Dare Valley Railway Company*, L. R. 6 Eq. 429. In construing section 8 of the Common Law Procedure Act, 1854, it was laid down that that section did not authorise the Court to send back an award on other grounds than those which before the Act would have induced them to set it aside, or to treat it as a nullity in an action brought to enforce it, or to remit it when the submission gave the Court power to do so. See *Mills v. Bowyer*, 3 K. & J. 66. These decisions govern the courts in construing this section of the Arbitration Act, and an award will not be set aside or remitted except upon the same grounds. *In re Keighley and Durant Railway Company* [1893], 1 Q. B. 405, 409. In that case the Court remitted the award for the reconsideration of the arbitrator where it appeared that material evidence had been discovered since the making of the award which might have affected the arbitrator's decision (following *Barnard v. Wainwright*, 19 L. J. (Q. B.) 423).

The Arbitration Act apparently gives the Court power to set aside the award only in cases where there has been misconduct of the arbitrator or the award has been improperly obtained. Section 11, *infra*. The proper remedy in other cases would now appear to be to have the award remitted under this section and for the grounds upon which the Court will act, see section 37 of the Lands Clauses Consolidation Act, 1845, note, "Setting aside and remitting awards," *ante*, p. 81.

The Court apparently has power also to remit the award to the arbitrator in order that he may state it in the form of a special case. See *Re Kirkleatham Local Board and Stockton Waterworks Board Arbitration* [1893], 1 Q. B. 375, p. 377.

Sect. 10. This power of remitting the award was held to apply to arbitrations under the Public Health Act, 1875, s. 180. *Warburton v. Hastingdon Local Board*, 48 L. J. C. P. 450.

Time for applying.—There is no definite time for applying to have an award remitted, but it must be done within a reasonable time, or if not within a reasonable time, the party applying must show good grounds that it could not have been applied for sooner and within a reasonable time. *Leicester v. Glasebrook*, 40 L. T. 883; *Warburton v. Hastingdon Local Board*, 48 L. J. C. P. 450.

"Within three months."—The Court has power to enlarge this period but will not do so after unreasonable delay. *In re Dare Valley Railway Company*, 4 Ch. 554.

Power to
set aside
award.

11. (1.) Where an arbitrator or umpire has misconducted himself, the Court may remove him.

(2.) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside.

"Has misconducted."—See section 25 of the Lands Clauses Consolidation Act, 1845, note "Restraining arbitration," *ante*, p. 64.

If the arbitrators have misconducted themselves, application should be made either to restrain the arbitration or to have the award set aside. Until set aside, no proceedings can be taken to have the question determined. *Buche v. Billingham* [1894], 1 Q. B. 107.

It has long been a general principle of the Courts that an award will be set aside if the arbitrator has been corrupt or partial. *Morgan v. Mather*, 2 Ves. Jr. 15; *Tittenson v. Peat*, 3 Atk. 529. Even if the arbitrator is guilty of no improper motive, but does not conduct the case according to legal rules, it may be set aside for misconduct. *Phipps v. Ingram*, 3 Dowl. 669; *Banks v. Banks*, 1 Gale. 46; and see Russell on "Arbitration," Part 3, chapter 9, s. 3. Thus, if an arbitrator receive evidence or information from one party in the absence of the other, the award will be set aside. *In re Gregson and Armstrong*, 10 R. 408.

"The Court."—In the other sections, authority is given to a Court or a judge, here it is only to a Court; the application will, therefore, be by motion to a judge in Court or to a Divisional Court. See section 21, *post*. By the Rules of the Supreme Court, Order 52, r. 4, "Every notice of motion to set aside, remit, or enforce an award . . . shall state in general terms the grounds of the application; and where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion."

By Order 52, r. 5, there must be at least two clear days between the service of the notice of motion and the day named in the notice for hearing the motion unless the Court or judge give special leave.

Time for Application to set aside.—Order 64, r. 14, of the Rules of the Supreme Court provides:—"An application to set aside an award

may be made at any time before the last day of the sittings next after such award has been made and published to the parties." **Sect. 11.**

By rule 7 of the same order a Court or judge has power to enlarge or abridge the time appointed by these rules, "upon such terms as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed." See *Re Oliver and Scott's Arbitration*, 43 Ch. D. 310. Leave to enforce the award may be given although time for setting it aside has not expired. Rules of the Supreme Court, Order 42, r. 31A, and see section 12.

"May set the award aside."—Generally, as to setting aside and remitting awards, see section 37 of the Lands Clauses Consolidation Act, 1845, and notes thereto, p. 80. As to remitting awards, see also section 10 of this Act, *supra*.

12. An award on a submission may, by leave of the Court or a judge, be enforced in the same manner as a judgment or order to the same effect. **Enforcing award.**

As to enforcing awards under the Lands Clauses Act, see section 36 of the Lands Clauses Consolidation Act, 1845, p. 78, and notes.

"Court or a Judge" or a Master.—Rules of the Supreme Court, Order 54, r. 12A, and see section 21, p. 594. Application should be made by summons before a Master in Chambers. The applicant must produce before the Master the original award (or a duplicate thereof), together with a copy, both to be verified by affidavit, the affidavit to be intituled "In the Matter of an Arbitration between A.B. and C.D." The verified award must on issuing for execution be filed in the writ department of the Central Office. See Practice Master's Rules, 20, and "*The Annual Practice*," 1895, pp. 172 and 1201.

"Be enforced."—It is provided by Rules of the Supreme Court, Order 42, r. 31A, as follows :—

"An award may, with the leave of the Court or a judge, and on such terms as may be just, be enforced at any time, though the time for moving to set it aside has not elapsed."

As to the time for setting the award aside, see section 11, *supra*.

Generally as to enforcing judgments or orders, see Rules of the Supreme Court, Orders 42—48. Order 42, r. 31, provides that :—
"Any judgment or order against a corporation wilfully disobeyed may, by leave of the Court or a judge, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property."

13—17. . . .

Sections 13—17 deal with references under order of Court and are not applicable to this subject.

Sect. 18.

Power to
compel
attendance
of witness
in any
part of the
United
Kingdom,
and to
order
*habeas
corpus*
to issue.

General.

18. (1.) The Court or a judge may order that a writ of *subpœna ad testificandum* or of *subpœna duces tecum* shall issue to compel the attendance before an official or special referee, or before any arbitrator or umpire, of a witness wherever he may be within the United Kingdom.

(2.) The Court or a judge may also order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before an official or special referee, or before any arbitrator or umpire.

Generally as to summoning witnesses, see section 8 and notes thereto, and see forms of *subpœna* there set out.

(1.) The power is given to Courts to compel the attendance of witnesses in Courts not in their jurisdiction but within the United Kingdom by 17 & 18 Vict. c. 34, amended by the Judicature Act, 1884, s. 16, and the procedure under this section will be regulated thereby.

Where a large number of documents are produced by a witness not a party to the proceedings, the proper course is for an adjournment to be made to enable the parties to ascertain which of the documents are material. The parties are not entitled to put in the whole of the documents *en bloc* or to ask the witness to produce the documents *seriatim* and question him thereon. *In re Maplin Sands*, 71 L. T. 594.

The Court or a Judge includes Master.—Order 54, r. 12A, and section 21. The application should be made by summons to a Master in Chambers.

Costs.—See section 20, *infra*, and section 34 of the Lands Clauses Consolidation Act, 1845.

Statement
of case
pending
arbitra-
tion.

19. Any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the Court or a judge, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference.

Compare Common Law Procedure Act, 1854, s. 4.

The arbitrator or umpire may state the award in the form of a special case. Section 7 (b), p. 584.

This power can no doubt be exercised by the Court or a judge in the case of references under the Lands Clauses Acts. Section 24, *infra*, and sections 1 and 7.

"At any stage of the Proceedings."—This means until the proceedings shall have come to an end by a completed award. Therefore, if an order *nisi* calling upon the arbitrators to show cause why they should not be required to state a case for the opinion of the Court is obtained, and the arbitrators draw up and sign their award on the same day before they have notice of the order, the jurisdiction of the Court is not ousted and the order *nisi* may be made absolute. *The Tabernacle Permanent Building Society v. Knight* [1892], A. C. 298. It would appear, however, that the Court has power after the award has been completed to remit the matter under section 10 to the arbitrator, ordering him to re-state his award in the form of a special case. *Re an Arbitration, Kirkleatham Local Board and Stockton Water Board* [1893], 1 Q. B. 375. Sect. 19.

"And shall, if so directed."—The application should be before a Master in Chambers. Rules of the Supreme Court, Order 54, r. 12A, and see section 21, *infra*, p. 594. It may be made *ex parte* for a rule *nisi* calling upon the arbitrators to show cause why they should not be required to state a case for the opinion of the Court. *The Tabernacle Permanent Building Society v. Knight* [1892], A. C. 298.

The usual procedure would be by summons. In the last cited case there was apparently pressure of time. The order directing a special case may be appealed (S. C.). The appeal in matters of practice and procedure from a judge shall be to the Court of Appeal. Judicature (Procedure) Act, 1894, s. 1 (3).

Costs.—The order should provide, in cases where it is allowable, the terms as to costs or otherwise the Court in determining a special case under this section will have no power over the costs. S. C. [1892], 2 Q. B. 613. See section 20, *infra*.

Appeal from decision on Special Case.—It was decided that no appeal lay from the opinion of a Court on a case stated under this section, the jurisdiction is consultative only. *In re Knight and Tabernacle Permanent Building Society* [1892], 2 Q. B. 613. When the award is stated in the form of a special case under section 7, it was held that an appeal does lie. *In re Kirkleatham Local Board and Stockton Waterworks Board* [1893], 1 Q. B. 375, 380. By the Supreme Court of Judicature (Procedure) Act, 1894, s. 1 (b), it is provided that:—"No appeal shall lie without the leave of the judge, or of the Court of Appeal, from any interlocutory order or interlocutory judgment made or given by a judge, *except* in certain cases, including (*inter alia*) any order on a special case stated under the Arbitration Act, 1889."

Procedure.—After a special case has been stated, it should be filed in the writ department of the central office. See note to section 7, p. 585.

20. Any order made under this Act may be made on Costs. such terms as to costs, or otherwise, as the authority making the order thinks just.

In arbitrations under the Lands Clauses Acts, there is a provision for costs in section 34 of the Lands Clauses Consolidation Act, 1845.

Sect. 20. The costs of certain orders under this Act, not provided for by that section would probably fall under the above section 20, as, for example, in the event of the promoters having the award set aside as being improperly obtained under section 11 of the Arbitration Act.

As to costs in special cases, see sections 7 and 19, *supra*.

Exercise
of powers
by masters
and other
officers.

21. Provision may from time to time be made by rules of Court for conferring on any master, or other officer of the Supreme Court, all or any of the jurisdiction conferred by this Act on the Court or a judge.

Order 54, r. 12A, of the Rules of the Supreme Court provides: "A master of the Supreme Court may exercise all the jurisdiction and powers conferred upon the Court or a judge by the Arbitration Act, 1889."

This rule was rule 8 of the Rules of the Supreme Court, December, 1889. Jurisdiction is given to a Court or a judge by sections 1, 3-6, 9, 12-17, and 19. In these cases, therefore, the procedure will be by a summons before a Master in Chambers.

Section 11 gives jurisdiction to the Court only, and the application will then be by motion to a judge in Court or to a Divisional Court.

Penalty
for
perjury.

22. Any person who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire shall be guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted, and punished accordingly.

Where a person tampered with the evidence to be laid before arbitrators, by altering the quality of certain samples, he was held to be guilty of a misdemeanor at common law in having endeavoured to pervert the due course of law and justice, arbitrators being regarded as a tribunal administering public justice, and it did not matter whether or not the samples were in fact used before the arbitrators. *Reg. v. Vreones* [1891], 1 Q. B. 360.

Crown to
be bound.

23. This Act shall, except as in this Act expressly mentioned, apply to any arbitration to which Her Majesty the Queen, either in right of the Crown, or of the Duchy of Lancaster or otherwise, or the Duke of Cornwall, is a party, but nothing in this Act shall empower the Court or a judge to order any proceedings to which Her Majesty or the Duke of Cornwall is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer without the consent of Her Majesty or the Duke of

Cornwall, as the case may be, or shall affect the law as to Sect. 23, costs payable by the Crown.

24. This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised by that Act.

Application of Act to references under statutory powers.

This Act is not inconsistent with another Act regulating an arbitration if it adds to the enactments in that other statute. The object of the legislature was to add to the remedies open to the parties under a statutory arbitration, and the sole purpose of the exception in section 24 was to prevent the application of the powers conferred upon the Court by this Act to arbitrations under any statute whose provisions either expressly or by reasonable implication excluded the exercise of such powers. The test is whether you can read the provisions of this Act with the other without any conflict between the two. *Tabernacle Permanent Building Society v. Knight* [1892], A. C. 298, 303, 306. As regards adding to submissions, see section 25, and *In re Williams and Stepney* [1891], 2 Q. B. 257.

As to application and construction of the Act, see note to the preamble, *ante*, p. 577.

25. This Act shall not affect any arbitration pending at the commencement of this Act, but shall apply to any arbitration commenced after the commencement of this Act under any agreement or order made before the commencement of this Act.

Saving for pending arbitrations.

This Act commences on the 1st January, 1890. Section 29.

“Any agreement or order” is a larger expression than a “submission” and includes it, and may include matters which could not technically be described as submissions. *In re Williams and Stepney* [1891], 2 Q. B. 257.

This Act may add to a submission a number of things which are not in the submission, unless the intention that they should not be added is expressed in the submission or the contrary prevailed. S. C., and see *In re Wilson and Eastern Counties Navigation Company* [1892], 1 Q. B. 81.

26. (1.) The enactments described in the second schedule to this Act are hereby repealed to the extent therein men-

Repeal.

Sect. 26. tioned, but this repeal shall not affect anything done or suffered, or any right acquired or duty imposed or liability incurred, before the commencement of this Act, or the institution or prosecution to its termination of any legal proceeding or other remedy for ascertaining or enforcing any such liability.

(2.) Any enactment or instrument referring to any enactment repealed by this Act shall be construed as referring to this Act.

This Act was intended to consolidate and amend. See note to the preamble.

The second schedule repeals the whole of 9 Will. 3, c. 15; sections 39—41 of 3 & 4 Will. 4, c. 42; sections 3—17 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125); sections 57—59 of the Judicature Act, 1873; and part of section 56 of the same Act, namely, from “subject to any rules of Court” down to “as a judgment by the Court,” and the words “special referees or,” and sections 9—11 of the Judicature Act, 1884.

Definitions.

27. In this Act, unless the contrary intention appears—

“Submission” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

“Court” means Her Majesty’s High Court of Justice.

“Judge” means a judge of Her Majesty’s High Court of Justice.

“Rules of Court” means the rules of the Supreme Court made by the proper authority under the Judicature Acts.

Submission.—Section 25 of the Lands Clauses Consolidation Act, 1845, makes the appointment of an arbitrator thereunder “a submission to arbitration of the party by whom the same shall be made.” It is to be deemed a submission by consent. See section 25, note “A submission to Arbitration,” *ante*, p. 64, and section 1 of the Arbitration Act.

Judge.—By the Rules of the Supreme Court, Order 54, r. 12A, a Master is empowered to exercise the jurisdiction and powers conferred upon the Court or a judge by this Act. Rules of the Supreme Court, December, 1889, r. 8, and see section 21, *supra*.

28. This Act shall not extend to Scotland or Ireland. **Sect. 28.**
Extent.

29. This Act shall commence and come into operation **Com-**
on the first day of January, one thousand eight hundred and **mence-**
ninety. **ment.**

30. This Act may be cited as the Arbitration Act, 1889. **Short title.**

THE HOUSING OF THE WORKING CLASSES ACT, 1890.

53 & 54 VICT. CAP. 70.

*An Act to consolidate and amend the Acts relating to Artizans
and Labourers Dwellings and the Housing of the Working
Classes.* [18th August, 1890.]

This Act repealed and consolidated all the previous Acts dealing with artizans and labourers' dwellings and lodging-houses, except a few sections of the Housing of the Working Classes Act, 1885, which amend the general sanitary law, and the Working Classes Dwellings Act, 1890, an Act to facilitate gifts of land for dwellings of the working classes. It has been amended by the Housing of the Working Classes Act, 1894 (53 & 54 Vict. c. 70), which enables the local authority to borrow money for the purpose of purchasing land or of paying compensation under Part 2 of this Act.

The Act is divided into seven parts. Part 1 deals with unhealthy areas; Part 2 with unhealthy dwelling-houses; and Part 3 with working-class lodging-houses. Part 4 contains supplemental provisions; Parts 5 and 6 apply the Act to Scotland and Ireland respectively; and Part 7 deals with repeals and temporary provisions. Parts 1, 2, and 3 enable various local authorities to deal with unhealthy houses, and to provide others, and for the purposes of each of these parts of the Act land may be taken compulsorily, and it should be noticed that the provisions as to compensation are somewhat different as regards each of these parts of the Act.

* * * * *

PART I.

Unhealthy Areas.

Sect. 3. **3.** This part of this Act shall not apply to rural sanitary districts.

The local authority, for the purposes of this part of the Act, is in urban districts the urban district council. In London, in the city, it is the Commissioners of Sewers, and in the county, the London County Council.

This part of the Act consolidates and mainly re-enacts the Artizans and Labourers Dwellings Improvement Acts of 1875 (38 & 39 Vict. c. 36), of 1879 (42 & 43 Vict. c. 63), and of 1882 (45 & 46 Vict. c. 54).

Scheme of Local Authority.

4, 5.

Sections 4 and 5 provide that where an official representation is made by the medical officer of health that a certain area is unhealthy, and that an improvement scheme should be made, the local authority shall, if satisfied of the fact, proceed to make such a scheme. Any number of such areas may be included in one improvement scheme. If the local authority do not make a scheme, they must send a notification to the confirming authority, who may direct a local inquiry. Section 10. If the representation affects not more than ten houses in London, the matter is to be treated as under Part 2. Section 72.

6. (1.) The improvement scheme of a local authority shall be accompanied by maps, particulars, and estimates, and

Sect. 6.
Requisites
of im-
provement
scheme of
local
authority.

(a.) May exclude any part of the area in respect of which an official representation is made, or include any neighbouring lands, if the local authority are of opinion that such exclusion is expedient or inclusion is necessary for making their scheme efficient for sanitary purposes ; and

(b.) May provide for widening any existing approaches to the unhealthy area or otherwise for opening out the same for the purposes of ventilation or health ; and

(c.) Shall provide such dwelling accommodation, if any, for the working classes displaced by the scheme as is required to comply with this Act ; and

(d.) Shall provide for proper sanitary arrangements.

(2.) The scheme shall distinguish the lands proposed to be taken compulsorily.

(3.) The scheme may also provide for the scheme or any part thereof being carried out and effected by the person entitled to the first estate of freehold in any property comprised in the scheme or with the concurrence of such person, under the superintendence and control of the local authority, and upon such terms and conditions to be embodied in the

Sect. 6. scheme as may be agreed upon between the local authority and such person.

Section 5 of the Artizans and Labourers Dwellings Improvement Act, 1875, was similar in effect to this section.

"Neighbouring lands."—These lands should be distinguished in the scheme from the unhealthy area, as, by section 21, the compensation payable in respect of premises situated within an unhealthy area is to be determined according to the principles there laid down. Neighbouring lands are probably to be valued according to the principles laid down under the Lands Clauses Act (see note to section 63, *ante*, p. 111), and under section 21, sub-section (1), *infra*, p. 609. They may be taken compulsorily if included among the lands proposed to be taken compulsorily.

"Working classes displaced."—Section 11 requires that an improvement scheme shall in London provide for the accommodation of at least as many persons of the working class as may be displaced in the area comprised therein. The accommodation may be in the vicinity, and not within the area. The confirming authority may dispense with this proviso in certain cases, and may allow the accommodation to be provided at a distance from the area, and out of London such accommodation may be provided if the confirming authority so require.

By section 23, the local authority may appropriate any land belonging to them for this purpose, or purchase it by agreement. The land may also be purchased for this purpose under Part 3.

As to the effect upon the power to take land of a proviso in a special Act that the local authority shall prove that such accommodation has been provided elsewhere. See *Spencer v. Metropolitan Board of Works*, 22 Ch. D. 142.

"The first estate of freehold."—As to the execution of the scheme, see section 12, *supra*; and as to the local authority contracting with the owner of the first estate of freehold to carry out the scheme. See sub-section (6) of that section.

Confirmation of Scheme.

Publica-
tion of
notices.

7. Upon the completion of any improvement scheme the local authority shall—

- (a.) Publish, during three consecutive weeks in the month of September, or October, or November, in some one and the same newspaper circulating within the district of the local authority, an advertisement stating the fact of a scheme having been made, the limits of the area comprised therein, and naming a place within such area or in the vicinity thereof

where a copy of the scheme may be seen at all Sect. 7.
reasonable hours ; and

- (b.) During the month next following the month in which such advertisement is published serve a notice on every owner or reputed owner, lessee or reputed lessee, and occupier of any lands proposed to be taken, compulsorily, so far as such persons can reasonably be ascertained, stating that such lands are proposed to be taken compulsorily for the purpose of an improvement scheme, and in the case of any owner or reputed owner, lessee, or reputed lessee, requiring an answer stating whether the person so served dissents or not in respect of taking such lands ;
- (c.) Such notice shall be served—
- (i.) By delivery of the same personally to the person required to be served, or if such person is absent abroad, or cannot be found, to his agent, or if no agent can be found, then by leaving the same on the premises ; or,
 - (ii.) By leaving the same at the usual or last known place of abode of such person as aforesaid ; or,
 - (iii.) By post addressed to the usual or last known place of abode of such person.
- (d.) One notice addressed to the occupier or occupiers without naming him or them, and left at any house shall be deemed to be a notice served on the occupier or on the occupiers of any such house.

“The local authority shall publish.”—In assessing the compensation for premises under this part of the Act, any addition to or improvement of the premises, except for repair, made after the date of this publication shall not be included. Section 21, sub-section (1), *supra*.

“Serve a notice.”—There is a similar proviso in section 176 of the Public Health Act, 1875, *ante*, p. 511. Under that section it has been held that such a notice creates no legal relationship between the parties, as a notice to treat does under section 18 of the Lands Clauses Act, 1845. *Burges v. Bristol Sanitary Authority*, 50 J. P. 455 ; and as to the effect

Sect. 7. of a notice to treat, see *ante*, p. 41. As the owner, however, by section 21, is not entitled to compensation for any addition or improvement made to his property except in the way of repair after the publication mentioned in this section, it would appear that his rights are to some extent affected. The notice that would correspond to the notice to treat is apparently that mentioned in Article 6, sub-section (2), of the Second Schedule. See *Wilkins v. Mayor of Birmingham*, 25 Ch. D. 78, a case under the somewhat similar provision in the schedule to the Artizans Dwellings Improvement Act, 1875, which was afterwards amended to the present form. Section 21 states the time at which the interests are to be valued.

As to forms of notices and advertisements, see section 27, *infra*; and as to dispensing with notices, see section 28.

Making
and confir-
mation
of pro-
visional
order.

8. (1.) Upon compliance with the foregoing provisions with respect to the publication of an advertisement and the service of notices, the local authority shall present a petition, if it relates to any part of the county or city of London, to a Secretary of State, and if it relates to any other place, to the Local Government Board, praying that an order may be made confirming such scheme.

(2.) The petition shall be accompanied by a copy of the scheme, and shall state the names of the owners or reputed owners, lessees or reputed lessees, who have dissented in respect of the taking their lands, and shall be supported by such evidence as the Secretary of State or Local Government Board, according to the circumstances of the case (in this part of this Act referred to as the confirming authority), may from time to time require.

(3.) If, on consideration of the petition and on proof of the publication of the proper advertisements and the service of the proper notices, the confirming authority think fit to proceed with the case, they shall direct a local inquiry to be held in, or in the vicinity of, the area comprised in the scheme, for the purpose of ascertaining the correctness of the official representation made as to the area and the sufficiency of the scheme provided for its improvement, and any local objections to be made to such scheme.

(4.) After receiving the report made upon such inquiry, the confirming authority may make a provisional order

declaring the limits of the area comprised in the scheme and Sect. 8. authorising such scheme to be carried into execution.

(5.) Such provisional order may be made either absolutely or with such conditions and modifications of the scheme as the confirming authority may think fit, so that no addition be made to the lands proposed in the scheme to be taken compulsorily, and it shall be the duty of the local authority to serve a copy of any provisional order so made in the manner and upon the persons in which and upon whom notices in respect of lands proposed to be taken compulsorily are required by this part of this Act to be served, except tenants for a month or a less period than a month.

(6.) A provisional order made in pursuance of this section shall not be of any validity unless and until it has been confirmed by Act of Parliament; and it shall be lawful for the confirming authority, as soon as conveniently may be, to obtain such confirmation, and any Act confirming any provisional order made in pursuance of this part of this Act, with such modifications as may seem fit to Parliament, shall be a public General Act of Parliament, and is in this part of this Act referred to as the confirming Act.

(7.) The confirming authority may make such order as they think fit in favour of any person whose lands were proposed by the scheme to be taken compulsorily for the allowance of the reasonable costs, charges, and expenses properly incurred by him in opposing such scheme.

(8.) All costs, charges, and expenses incurred by the confirming authority in relation to any provisional order under this part of this Act shall, to such amount as the confirming authority think proper to direct, and all costs, charges, and expenses of any person to such amount as may be allowed to him by the confirming authority in pursuance of the aforesaid power, shall be deemed to be an expense incurred by the local authority under this part of this Act, and shall be paid to the confirming authority and to such person respectively, in such manner and at such times and either in one sum or

Sect. 8. by instalments as the confirming authority may order, with power for the confirming authority to direct interest to be paid at such rate not exceeding five pounds in the hundred by the year as the confirming authority may determine, upon any sum for the time being due in respect of such costs, charges, and expenses as aforesaid.

(9.) Any order made by the confirming authority in pursuance of this section may be made a rule of a superior Court, and be enforced accordingly.

9.

By section 9, if a bill is referred to a committee of Parliament, the committee has power to give costs to either party as they may think just.

* * * * *

Execution of Scheme by Local Authority.

Duty of
local
authority
to carry
scheme
when con-
firmed into
execution.

12. (1.) When the confirming Act authorising any improvement scheme of a local authority under this part of this Act has been passed by Parliament, it shall be the duty of that authority to take steps for purchasing the lands required for the scheme, and otherwise for carrying the scheme into execution as soon as practicable.

(2.) They may sell or let all or any part of the area comprised in the scheme to any purchasers or lessees for the purpose and under the condition that such purchasers or lessees will, as respects the land so purchased by or leased to them, carry the scheme into execution; and in particular they may insert in any grant or lease of any part of the area provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the buildings, and prohibiting the division of buildings, and any addition to or alteration of the character of buildings without the consent of the local authority, and for the re-vesting of the land in the local authority, or their re-entry thereon, on breach of any provision in the grant or lease.

(3.) The local authority may also engage with any body of Sect. 12. trustees, society, or person, to carry the whole or any part of such scheme into effect upon such terms as the local authority may think expedient, but the local authority shall not themselves, without the express approval of the confirming authority, undertake the rebuilding of the houses or the execution of any part of the scheme, except that they may take down any or all of the buildings upon the area, and clear the whole or any part thereof, and may lay out, form, pave, sewer, and complete all such streets upon the land purchased by them as they may think fit, and all streets so laid out and completed shall thenceforth be public streets, repairable by the same authority as other streets in the district.

(4.) Provided that in any grant or lease of any part of the area which may be appropriated by the scheme for the erection of dwellings for the working classes the local authority shall impose suitable conditions and restrictions as to the elevation, size, and design of the houses, and the extent of the accommodation to be afforded thereby, and shall make due provision for the maintenance of proper sanitary arrangements.

(5.) If the local authority erect any dwellings out of funds to be provided under this part of this Act, they shall, unless the confirming authority otherwise determine, sell and dispose of all such dwellings within ten years from the time of the completion thereof.

(6.) The local authority may, where they think it expedient so to do, without themselves acquiring the land, or after or subject to their acquiring any part thereof, contract with the person entitled to the first estate of freehold in any land comprised in an improvement scheme for the carrying of the scheme into effect by him in respect of such land.(a)

(a) The scheme may provide for this to be done. See section 1, subsection (3).

Sect. 13. **13.** If within five years after the removal of any buildings on the land set aside by any scheme authorised by a confirming Act as sites for working men's dwellings, the local authority have failed to sell or let such land for the purposes prescribed by the scheme, or have failed to make arrangements for the erection of the said dwellings, the confirming authority may order the said land to be sold by public auction or public tender, with full power to fix a reserve price, subject to the conditions imposed by the scheme, and to any modifications thereof, which may be made in pursuance of this part of this Act, and to a special condition on the part of the purchaser to erect upon the said land dwellings for the working classes, in accordance with plans to be approved by the local authority, and subject to such other reservations and regulations as the confirming authority may deem necessary.

Completion of scheme on failure by local authority.

The period within which the compulsory powers may be exercised is three years from the passing of the confirming Act. See section 20, *infra*; and see section 123 of the Lands Clauses Act, 1845, *ante*, p. 271.

Notice to occupiers by placards.

14. The local authority shall, not less than thirteen weeks before taking any fifteen houses or more, make known their intention to take the same by placards, handbills, or other general notices placed in public view upon or within a reasonable distance of such houses, and the local authority shall not take any such houses until they have obtained a certificate of a justice of the peace that it has been proved to his satisfaction that the local authority have made known, in manner required by this section, their intention to take such houses.

See also the provision as to giving notice of the appointment of an arbitrator by placards and handbills in Article 6 of the schedule, *post*.

Power of confirming authority to modify authorised scheme.

15. (1.) The confirming authority, on application from the local authority, and on its being proved to their satisfaction that an improvement can be made in the details of any scheme authorised by a confirming Act, may permit the local authority to modify any part of their improvement scheme which it may appear inexpedient to carry into execution, but

any part of the scheme respecting the provision of dwelling accommodation for persons of the working class, when so modified, shall be such as might have been inserted in the original scheme. Sect. 15.

(2.) A statement of any modifications permitted to be made in any part of an improvement scheme in pursuance of this section shall be laid by the confirming authority before both Houses of Parliament as soon as practicable after the permission is given, if Parliament be then sitting, and if not, within one month after the next meeting of Parliament.

Provided always, that if such modification requires a larger public expenditure than that sanctioned by the former scheme, or the taking of any property otherwise than by agreement, or affects injuriously other property in a manner different to that proposed in the former scheme without the consent of the owner and occupier of any such property, the modification must be made by a provisional order to be confirmed by Act of Parliament in the manner provided by this part of this Act on the completion of an improvement scheme.

For definition of confirming authority, see section 8, sub-sects. (1), (2).

16—19.

Sections 16—19 provide for inquiries to be held by the confirming authority as to unhealthy areas, on the application of twelve or more ratepayers, if the medical officer make default in respect thereof.

Acquisition of Land.

20. The clauses of the Lands Clauses Acts, with respect to the purchase and taking of lands otherwise than by agreement, shall not, except to the extent set forth in the second schedule to this Act, apply to any lands taken in pursuance of this part of this Act, but save as aforesaid the said Lands Clauses Acts, as amended by the provisions contained in the said schedule, shall regulate and apply to the purchase and taking of lands, and shall for that purpose be deemed to form part of this part of this Act in the same manner as if they were enacted in the body thereof; subject to the provisions of Acquisition of land.

Sect. 20. this part of this Act and to the provisions following ; that is to say,

- (i.) This part of this Act shall authorise the taking by agreement of any lands which the local authority may require for the purpose of carrying into effect the scheme authorised by any confirming Act, but it shall authorise the taking by the exercise of any compulsory powers of such lands only as are proposed by the scheme in the confirming Act to be taken compulsorily :
- (ii.) In the construction of the Lands Clauses Acts, and the provisions in the Second Schedule to this Act, this part of this Act shall be deemed to be the special Act, and the local authority shall be deemed to be the promoters of the undertaking ; and the period after which the powers for the compulsory purchase or taking of lands shall not be exercised shall be three years after the passing of the confirming Act.

Cf. section 19 of the Artizans Dwellings Improvement Act, 1875.

"With respect to the Purchase, &c."—The words "with respect to the purchase and taking of lands otherwise than by agreement," form the heading to sections 16—68 of the Lands Clauses Act, 1845, *ante*, p. 31. These sections are only incorporated to the extent set forth in the Second Schedule. All the other clauses are incorporated as amended by the same schedule.

Section 133, which requires the promoters of an undertaking to make good the deficiency in the poor's rate and land tax, is, therefore, incorporated, and the local authority must make good that deficiency. *Vestry of St. Leonard, Shoreditch v. London County Council*, 11 "Times" L. R. 420; and see notes to section 133, *ante*, p. 287.

Similarly, it was held under the same provisions in section 19 of the Artizans and Labourers Dwellings Improvement Act, 1875, that section 121 of the Lands Clauses Act, 1845, which deals with tenants having no greater interest than from year to year, was incorporated in that Act. *Wilkins v. Mayor of Birmingham*, 25 Ch. D. 78.

Section 78, *post*, provides that tenants whose contract of tenancy is for less than a year, may receive an allowance for the expenses of removal.

As section 68 is not incorporated, there is no general provision giving compensation for injurious affection to land when no land has been taken. Section 22 of this Act, however, provides for the giving of compensation in respect of the extinction of rights of way and other

rights or easements over the land taken. See note thereto, *infra*, Sect. 20, p. 612.

“Provisions contained in the said Schedule.”—The schedule, besides providing a method of assessing the compensation different from that under the Lands Clauses Acts, gives the arbitrator power to apportion rentcharges and rents payable in respect of leases. Article 11. He is also given power to settle the compensation in respect of omitted interests. Article 13.

Section 92 of the Lands Clauses Act, 1845, *ante*, p. 238, which provides that a person shall not be required to sell a part only of any house, building, or manufactory, is amended for the purposes of this Act, and the local authority will not be obliged to purchase the whole if the arbitrator decide that part can be taken without material damage to the whole. Article 12.

Articles 14—23 deal with the payment of purchase money.

Articles 24 and 25 deal with entry upon lands before the settlement of the compensation, and certain provisions other than those in section 85 of the Lands Clauses Act, 1845, *ante*, p. 222.

“The Special Act.”—As “this part of this Act” is to be deemed the special Act, it should be noted that section 2 provides that the expression “this part of this Act” includes any confirming Act.

21. (1.) Whenever the compensation payable in respect of any lands or of any interests in any lands proposed to be taken compulsorily in pursuance of this part of this Act requires to be assessed—

Special provision as to compensation.

- (a.) The estimate of the value of such lands or interests shall be based upon the fair market value, as estimated at the time of the valuation being made of such lands, and of the several interests in such lands, due regard being had to the nature and then condition of the property, and the probable duration of the buildings in their existing state, and to the state of repair thereof, without any additional allowance in respect of the compulsory purchase of an area or of any part of an area in respect of which an official representation has been made, or of any lands included in a scheme which, in the opinion of the arbitrator, have been so included as falling under the description of the property which may be constituted an unhealthy area under this part of this Act; and

Sect. 21. (b.) In such estimate any addition to or improvement of the property made after the date of the publication in pursuance of this part of this Act of an advertisement stating the fact of the improvement scheme having been made shall not (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repair) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made so as to increase the amount of compensation to be paid for the lands; and

(2.) On the occasion of assessing the compensation payable under any improvement scheme in respect of any house or premises situate within an unhealthy area evidence shall be receivable by the arbitrator to prove—

(1st.) That the rental of the house or premises was enhanced by reason of the same being used for illegal purposes or being so overcrowded as to be dangerous or injurious to the health of the inmates; or

(2ndly.) That the house or premises are in such a condition as to be a nuisance within the meaning of the Acts relating to nuisances, or are in a state of defective sanitation, or are not in reasonably good repair; or

(3rdly.) That the house or premises are unfit, and not reasonably capable of being made fit, for human habitation;

and, if the arbitrator is satisfied by such evidence, then the compensation—

(a.) Shall in the first case so far as it is based on rental be based on the rental which would have been obtainable if the house or premises were occupied for legal purposes and only by the number of persons whom the house or premises were, under all the circumstances of the case, fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates; and

(b.) Shall in the second case be the amount estimated as Sect. 21.

the value of the house or premises if the nuisance had been abated, or if they had been put into a sanitary condition, or into reasonably good repair, after deducting the estimated expense of abating the nuisance, or putting them into such condition or repair, as the case may be ; and

(c.) Shall in the third case be the value of the land, and of the materials of the buildings thereon.

"Requires to be assessed."—It is the amount that is to be assessed. As in other cases, the arbitrator has no jurisdiction to decide as to the claimant's legal right to compensation. *Wilkins v. Mayor of Birmingham*, 25 Ch. D. 78 ; and see note to section 23 of the Lands Clauses Act, 1845, *ante*, p. 56.

"Without any additional allowance."—There is no provision in the Lands Clauses Acts requiring that any additional allowance shall be given in respect of compulsory purchase, nor is there any legal decision to that effect. Surveyors, however, in determining the compensation have been in the habit of adding a certain percentage to the amount ascertained as the value of the property when calculated from tables commonly in use, and this addition has been made for what has been loosely called compulsory purchase. Strictly, the law has nothing to do with the way in which an arbitrator arrives at the amount. Its function is to define the subject to be assessed. Most probably, the extra percentage added by surveyors to what they calculated as the ordinary market value was added, because in arriving at the ordinary value, the person in possession, and who may be anxious to remain in possession, is not regarded as a possible purchaser. The market value thus obtained is the value to a person desiring to sell. The true market value in the case of a compulsory purchase can only be ascertained by contemplating the owner as a possible purchaser, and considering the price he would pay to remain in possession. The intention of this section would appear to be that the owner is to receive the market value calculated upon the principle that he is desirous to sell the property.

This method of ascertaining the market value extends, it would appear, only to land within the unhealthy area, and not to neighbouring lands, which may be taken for the purposes of the scheme, as to which, see section 6, *ante*, p. 599. Under the similar provision in the Artizans Dwellings Improvement Act, 1875, s. 19, sub-sect. (2), it was held in an Irish case that as to premises not situated within the unhealthy area, compensation for compulsory purchase might be awarded. *Mayor of Dublin v. Dowling*, L. R. Ir. 6 Q. B. 502.

In the same case it was decided that as regards premises, whether within or without the unhealthy area, that in ascertaining the fair market value of premises an allowance should be made for goodwill annexed thereto, as in cases under the Lands Clauses Acts. See note, *ante*, p. 114.

Tenants for less than a year may be allowed a reasonable sum for expenses of removing. Section 78, *infra*.

Sect. 21. In a case under a local sanitary Act, where houses were taken which had been declared to be unfit for habitation, and the compensation clause was almost identical with sub-section (1) (a) of this section, but with the addition of the words "and all circumstances affecting such value" after "repair thereof," the arbitrator assessed the compensation upon the value of the land and of the materials for building as is now provided in sub-section (2) (c) of this section. The Court, however, decided that he was wrong in so doing, and that he ought to have first considered what was the fair market value, what the buildings would sell for, and from that make deductions in respect of their sanitary condition and state of repair. The fact that a declaration had been made that they ought to be demolished was not admissible as evidence; but everything relevant to the question of value was to be considered. *Gough v. Mayor of Liverpool*, 65 L. T. 512. The words "and all circumstances affecting such value" occurred in the Artizans Dwellings Improvement Act, 1875, s. 19, but were struck out by the amending Act of 1882 (45 & 46 Vict. c. 54, s. 4).

"Upon the date of the Publication."—This is the publication of an advertisement as provided in section 7, *ante*, p. 600. In the absence of such a provision the owner of premises in the area would be entitled to add to and improve them after the provisional order had been obtained, and to receive compensation in respect thereof. *Higgins v. Mayor of Dublin*, 28 L. R. Ir. Q. B. 484.

Extinction
of rights
of way
and other
easements.

22. Upon the purchase by the local authority of any lands required for the purpose of carrying into effect any scheme, all rights of way, rights of laying down or of continuing any pipes, sewers, or drains on, through, or under such lands, or part thereof, and all other rights or easements in or relating to such lands, or any part thereof, shall be extinguished, and all the soil of such ways, and the property in the pipes, sewers, or drains, shall vest in the local authority, subject to this provision, that compensation shall be paid by the local authority to any persons or bodies of persons proved to have sustained loss by this section, and such compensation shall be determined in the manner in which compensation for lands is determinable under this part of this Act, or as near thereto as circumstances admit.

This section is identical with section 20 of the Artizans Dwellings Improvement Act, 1875 (38 & 39 Vict. c. 36).

Under that section it was held that it extended to ancient lights over the land purchased. When land is purchased under this Act it is freed from easements of every kind, for which compensation must be paid to persons proved to have sustained loss. It is not necessary that the loss should happen at the time when the land is purchased. If it happens afterwards, the person who sustains the loss will be entitled to claim

compensation when the loss can be proved. *Badham v. Maris*, 52 L. J. Ch. 237n. Following the decision in that case, PEARSON, J., held that no action lay to restrain a local authority from removing a house in such a way as to interfere with a right to support, and that the remedy, if any, was to claim compensation. *Swainston v. Finn and The Metropolitan Board of Works*, 52 L. J. Ch. 235. Sect. 22.
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In a case where the owner of land had at the time when land was purchased under this Act enjoyed an uninterrupted access of light and air over the land purchased, and that access of light and air was not interfered with for ten years later, so that he had enjoyed it for twenty years, it was held that the lessee of the local authority was entitled to erect buildings which would interfere therewith, as the object of the section was to extinguish inchoate rights as well as complete rights. The Court also expressed an opinion that these inchoate rights were a matter for compensation under this section. *Barlow v. Ross*, 24 Q. B. D. 381.

23. A local authority may, for the purpose of providing accommodation for persons of the working classes displaced by any improvement scheme, appropriate any lands for the time being belonging to them which are suitable for the purpose, or may purchase by agreement any such further lands as may be convenient. Applica-
tion of
lands for
accommo-
dation of
working
classes.

In the case of purchase by agreement, the Lands Clauses Acts, to the extent incorporated by section 20, *ante*, will apply.

24—26.

Sections 24 and 25 contain provisions to enable local authorities to obtain money for the purpose of carrying out this Act.

Section 26 makes provision in case of the absence of the medical officer of health.

27. The confirming authority may by order prescribe the forms of advertisements and notices under this part of this Act; it shall not be obligatory on any persons to adopt such forms, but the same, when adopted, shall be deemed sufficient for all the purposes of this part of this Act. Power of
confirming
authority
as to
advertisements and
notices.

28. The confirming authority may, on the consideration of any petition of a local authority for an order confirming a scheme, dispense with the publication of any advertisement, or the service of any notice, proof of which publication or service is not given to them as required by this part of this Act, where reasonable cause is shown to their satisfaction why such publication or service should be dispensed with, Power of
confirming
authority
to dispense
with
notices in
certain
cases.

Sect. 28. and such dispensation may be made by the confirming authority, either unconditionally or upon such condition as to the publication of other advertisements and the service of other notices or otherwise as the confirming authority may think fit, due care being taken by the confirming authority to prevent the interest of any person being prejudiced by the fact of the publication of any advertisement or the service of any notice being dispensed with in pursuance of this section.

For definition of confirming authority, see section 8, sub-sects. (1), (2).

PART II.

UNHEALTHY DWELLING-HOUSES.

Preliminary.

Definitions :

29. In this part of this Act, unless the context otherwise requires—

“Street.”

The expression “street” includes any court, alley, street, square, or row of houses :

“Dwelling-house.”

The expression “dwelling-house” means any inhabited building, and includes any yard, garden, outhouses, and appurtenances belonging thereto or usually enjoyed therewith, and includes the site of the dwelling-house as so defined.

“Owner.”

The expression “owner,” in addition to the definition given by the Lands Clauses Acts, includes all lessees or mortgagees of any premises required to be dealt with under this part of this Act, except persons holding or entitled to the rents and profits of such premises for a term of years, of which twenty-one years do not remain unexpired.

“Closing order.”

The expression “closing order” means an order prohibiting the use of premises for human habitation made under the enactments set out in the Third Schedule in this Act.

This part of the Act (sections 29—52), deals with the provisions in Artizans and Labourers Dwellings Act, 1868 (31 & 32 Vict. c. 130), which was amended by Acts of 1879 (42 & 43 Vict. c. 64, and 43 Vict. c. 8); 1882 (45 & 46 Vict. c. 54, Part 2); and 1885 (48 & 49 Vict. c. 72). It can be put in force in urban districts by urban district

authorities, in rural districts by rural district councils, in the city of London by the Commissioners of Sewers, and in the county of London by the vestry elected under the Metropolitan Management Act, 1855, in the parishes mentioned in Schedule A. to that Act, and the amending Acts of 1885 and 1887, and by the board of works elected under that Act in districts mentioned in Schedule B. to that Act and the same amending Acts. In the parish of Woolwich, however, the local board of health is the local authority for the purposes of this part of the Act. Section 92 and Schedule 1. Sect. 29.
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"Owner."—See the definition in section 3 of the Lands Clauses Act, 1845, *ante*.

The Artizans and Labourers Dwellings Act, 1868, contained the same definition of "owner." The tenant of premises under a lease expiring in less than a year, but who was also assignee of a lease of the same premises for twenty-one years, commencing at the expiration of the first lease, was under that Act held to have had such an interest in the premises at the time when proceedings were initiated by service of notices upon him as to make him "owner;" the date of the services of the notices being the point of time to be looked at in determining ownership for the purposes of the Act. *Reg. v. Vestry of St. Marylebone*, 20 Q. B. D. 415.

* * * * *

Sections 30—37 deal with houses which, from their unhealthy state, are unfit for habitation. The local authority may obtain a closing order requiring such houses to be closed until they are made fit for habitation. If they are not made fit, the local authority may obtain an order for their demolition. There is no provision for compensation, except that section 32, sub-sect. (3), provides as follows:—

32. (3.) Where a closing order has been made as respects any dwelling-house, the local authority shall serve notice of the order on every occupying tenant of the dwelling-house, and within such period as is specified in the notice, not being less than seven days after the service of the notice, the order shall be obeyed by him, and he and his family shall cease to inhabit the dwelling-house, and in default he shall be liable to a penalty not exceeding twenty shillings a day during his disobedience to the order. Provided that the local authority may make to every such tenant such reasonable allowance on account of his expenses in removing, as may have been authorised by the Court making the closing order, which authority the Court is hereby authorised to give, and the amount of the said allowance shall be a civil debt due from the owner of the dwelling-house to the local authority, and shall be recoverable summarily.

* * * * *

Sect. 35.

Appeal
against
order of
local
authority.42 & 43
Vict. c. 49.

35. (1.) Any person aggrieved by an order of the local authority under this part of this Act, may appeal against the same to a court of quarter sessions, and no work shall be done nor proceedings taken under any order until after the appeal is determined or ceases to be prosecuted ; and section thirty-one of the Summary Jurisdiction Act, 1879, respecting appeals from courts of summary jurisdiction to courts of quarter sessions shall apply with the necessary modifications as if the order of the local authority were an order of a court of summary jurisdiction.

(2.) Provided that—

- (a.) Notice of appeal may be given within one month after notice of the order of the local authority has been served on such person ;
- (b.) The Court shall, at the request of either party, state the facts specially for the determination of a Superior Court, in which case the proceedings may be removed into that Court.

This section is applicable to appeals in respect of obstructive buildings.
Section 38 (3).

* * * * *

Obstructive Buildings.

Power
to local
authority
to pur-
chase
houses, for
opening
alleys, &c.

38. (1.) If a medical officer of health finds that any building within his district, although not in itself unfit for human habitation, is so situate that by reason of its proximity to or contact with any other buildings it causes one of the following effects, (that is to say),—

- (a.) It stops ventilation, or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation or dangerous or injurious to health ; or
- (b.) It prevents proper measures from being carried into effect for remedying any nuisance injurious to

health or other evils complained of in respect of Sect. 38.
such other buildings ;

in any such case, the medical officer of health shall represent to the local authority the particulars relating to such first-mentioned building (in this Act referred to as "an obstructive building") stating that in his opinion it is expedient that the obstructive building should be pulled down.

(2.) Any four or more inhabitant householders of a district may make to the local authority of the district a representation as respects any building to the like effect as that of the medical officer under this section.

(3.) The local authority on receiving any such representation as above in this section mentioned shall cause a report to be made to them respecting the circumstances of the building and the cost of pulling down the building and acquiring the land, and on receiving such report shall take into consideration the representation and report, and if they decide to proceed, shall cause a copy of both the representation and report to be given to the owner of the lands on which the obstructive building stands, with notice of the time and place appointed by the local authority for the consideration thereof ; and such owner shall be at liberty to attend and state his objections, and after hearing such objections the local authority shall make an order either allowing the objection or directing that such obstructive building shall be pulled down, and such order shall be subject to appeal in like manner as an order of demolition of the local authority under the foregoing provisions of this part of this Act.(a)

(4.) Where an order of the local authority for pulling down an obstructive building is made under this section and either no appeal is made against the order, or an appeal is made and either fails or is abandoned, the local authority shall be authorised to purchase the lands on which the obstructive building is erected in like manner as if they had been authorised by a special Act to purchase the same ; and

Sect. 38. for the purpose of such purchase the provisions of the Lands Clauses Acts, with respect to the purchase and taking of lands otherwise than by agreement, (b) shall be deemed to be incorporated in this part of this Act (subject nevertheless to the provisions of this part of this Act), (c) and for the purpose of the provisions of the Lands Clauses Acts this part of this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking, and such lands may be purchased at any time within one year, after the date of the order, or if it was appealed against after the date of the confirmation.

(5.) The owner of the lands may within one month after notice to purchase the same is served upon him declare that he desires to retain the site of the obstructive building and undertake either to pull down or to permit the local authority to pull down the obstructive building, and in such case the owner shall retain the site and shall receive compensation from the local authority for the pulling down of the obstructive building.

(6.) The amount of such compensation, and also the amount of any compensation to be paid on the purchase of any lands under this section, shall in case of difference be settled by arbitration in manner provided in this part of this Act.

(7.) Where the local authority is empowered to purchase land compulsorily, it shall not be competent for the owner of a house or manufactory to insist on his entire holding being taken, where part only is proposed to be taken as obstructive, and where such part proposed to be taken can, in the opinion of the arbitrator to whom the question of disputed compensation is submitted, be severed from the remainder of the house or manufactory without material detriment thereto, provided that compensation may be awarded in respect of the severance of the part so proposed to be taken in addition to the value of that part. (d)

(8.) Where in the opinion of the arbitrator the demolition of an obstructive building adds to the value of such other

Sect. 38.

buildings as are in that behalf mentioned in this section, the arbitrator shall apportion so much of the compensation to be paid for the demolition of the obstructive building as may be equal to the increase in value of the other buildings amongst such other buildings respectively, and the amount apportioned to each such other building in respect of its increase in value by reason of the demolition of such obstructive building shall be deemed to be private improvement expenses incurred by the local authority in respect of such building, and such local authority may, for the purposes of defraying such expenses, make and levy improvement rates on the occupier of such premises accordingly; and the provisions of the Public Health Acts relating to private improvement expenses and to private improvement rates shall, so far as circumstances admit, apply accordingly in the same manner as if such provisions were incorporated in this Act.

(9.) If any dispute arises between the owner or occupier of any building (to which any amount may be apportioned in respect of private improvement expenses) and the arbitrator by whom such apportionment is made, such dispute shall be settled by two justices in manner provided by the Lands Clauses Acts, in cases where the compensation claimed in respect of lands does not exceed fifty pounds.(e)

(10.) Where the owner retains the site or any part thereof, no house or other building or erection which will be dangerous or injurious to health, or which will be an obstructive building within the meaning of this section, shall be erected upon such site or any part thereof; and if any house, building, or erection is erected on the site contrary to the provisions of this section the local authority may at any time order the owner to abate or alter the said house, building, or erection; and in the event of non-compliance with such order may, at the expense of the owner thereof, abate or alter the same.

(11.) Where the lands are purchased by the local authority the local authority shall pull down the obstructive building, or such part thereof as may be obstructive within the meaning

Sect. 38. of this section, and keep as an open space the whole site, or such part thereof as may be required to be kept open for the purpose of remedying the nuisance or other evils caused by such obstructive building, and may, with the assent of the Local Government Board, and upon such terms as that Board think expedient, sell such portion of the site as is not required for the purpose of carrying this section into effect.

(12.) A local authority may, where they so think fit, dedicate any land acquired by them under the authority of this section as a highway or other public place.

(a) Section 35, *ante*, p. 616.

(b) Sections 16—68, *ante*, pp. 31—143.

(c) See section 41, *post*, p. 624.

(d) Compare section 92 of the Lands Clauses Act, 1845, *ante*, p. 238; and see the Second Schedule hereto, Art. 12.

(e) See sections 22 and 24, *ante*, pp. 55, 59.

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*, s. 6 (2), a parish council is given the same power of making any complaint or representation as to unhealthy dwellings or obstructive buildings as is conferred on inhabitant householders under this Act, but without prejudice to the powers of such householders.

Scheme for Reconstruction.

Scheme
for area
comprising
houses
closed by
closing
order.

39. (1.) In any of the following cases, that is to say—

(a.) Where an order for the demolition of a building has been made in pursuance of this part of this Act, and it appears to the local authority that it would be beneficial to the health of the inhabitants of the neighbouring dwelling-houses if the area of the dwelling-house of which such building forms part were used for all or any of the following purposes, that is to say, either—

(i.) Dedicated as a highway or open space, or

(ii.) Appropriated, sold, or let for the erection of dwellings for the working classes, or

(iii.) Exchanged with other neighbouring land which is more suitable for the erection of

such dwellings, and on exchange will be Sect. 39.
appropriated, sold, or let for such erection ;
or

- (b.) Where it appears to the local authority that the closeness, narrowness, and bad arrangement or bad condition of any buildings, or the want of light, air, ventilation, or proper conveniences, or any other sanitary defect in any buildings is dangerous or prejudicial to the health of the inhabitants either of the said buildings or of the neighbouring buildings and that the demolition or the reconstruction and re-arrangement of the said buildings or of some of them is necessary to remedy the said evils, and that the area comprising those buildings and the yards, outhouses, and appurtenances thereof, and the site thereof, is too small to be dealt with as an unhealthy area under Part I, of this Act, (a)

the local authority shall pass a resolution to the above effect and direct a scheme to be prepared for the improvement of the said area.

(2.) Notice of the scheme may at any time after the preparation thereof be served in manner provided in Part I. of this Act with respect to notices of lands proposed to be taken compulsorily under a scheme made in pursuance of that part of this Act, on every owner or reputed owner, lessee or reputed lessee, and occupier of any part of the area comprised in the scheme, so far as those persons can reasonably be ascertained. (b)

(3.) The local authority shall, after service of such notice, petition the Local Government Board for an order sanctioning the scheme, and the Board may cause a local inquiry to be held, and, if satisfied on the report of such local inquiry that the carrying into effect of the scheme either absolutely, or subject to conditions or modifications would be beneficial to the health of the inhabitants of the said buildings or of the neighbouring dwelling-houses, may by order sanction the scheme with or without such conditions or modifications.

Sect. 39. (4.) Upon such order being made, the local authority may purchase by agreement the area comprised in the scheme as so sanctioned, and if they agree for the purchase of the whole area, the order, save so far as it provides for the taking of land otherwise than by agreement, shall take effect without confirmation. If they do not so agree, the order shall be published by the local authority by inserting a notice thereof in the *London Gazette*, and by serving notice thereof on the owners of every part of the area.

(5.) Any owner may, within two months after such publication, petition the Local Government Board against the order, and if such petition is presented and is not withdrawn, the order shall be provisional unless it is confirmed by Act of Parliament.

(6.) If the Local Government Board are satisfied that the order has been duly published, and that two months after such publication have expired, and that either a petition has not been presented, or if presented has been withdrawn, they shall confirm the order, and thereupon such order shall come into operation, and have effect as if it were enacted by this Act.

(7.) The order may incorporate the provisions of the Lands Clauses Acts, and for the purpose of those provisions this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking, and the area shall be acquired within three years after the date of the confirmation of the order: Provided that the amount of compensation shall, in case of difference, be settled by arbitration in manner provided by this part of this Act.

(8.) The provisions of Part I. of this Act relating to costs to be awarded in certain cases by a committee of either House of Parliament, to the duty of a local authority to carry a scheme when confirmed into execution, to the completion of a scheme on failure by a local authority, (c) and to the extinction of rights of way and other easements, shall, with the necessary modifications, apply for the purpose of any

scheme under this section in like manner as if it were a Sect. 39.
scheme under Part I. of this Act. (d)

(9.) The Local Government Board, on being satisfied by the local authority that an improvement can be made in the details of any scheme under this section, may by order permit the local authority to modify any part of the scheme which it may appear inexpedient to carry into execution : Provided that—

(a.) If the order sanctioning the scheme was confirmed by Parliament, a statement of such modification shall be laid by the Local Government Board before both Houses of Parliament as soon as practicable ; and

(b.) In any case, if the modification requires a larger expenditure than that sanctioned by the original scheme, or authorises the taking of any property otherwise than by agreement, or injuriously affects any property in a manner different from that proposed in the original scheme, without the consent of the owner or occupier of such property, notice of the order authorising the modification shall be published, and the order may be petitioned against and shall be subject to confirmation in like manner as if it were an order sanctioning an original scheme under this section. (e)

(a) As to when an unhealthy area is too small to be dealt with, under Part 1, see sections 72 and 73, *infra*.

(b) Section 7, *ante*, p. 600.

(c) Section 9.

(d) Section 22, *ante*, p. 612.

(e) Cf., section 15, *ante*, p. 606.

40. The Local Government Board shall in any order sanctioning a scheme under this part of this Act require the insertion in the scheme of such provisions (if any) for the dwelling accommodation of persons of the working classes displaced by the scheme as seem to the Board required by the circumstances.

Provisions
for accom-
modation
of persons
of the
working
classes.

Settlement of Compensation.

Sect. 41. **41.** In all cases in which the amount of any compensation is, in pursuance of this part of this Act, to be settled by arbitration, the following provisions shall have effect; (namely,)

Provisions as to arbitration.

- (1.) The amount of compensation shall be settled by an arbitrator to be appointed and removable by the Local Government Board.
- (2.) In settling the amount of any compensation—
 - (a.) The estimate of the value of the dwelling-house shall be based on the fair market value as estimated at the time of the valuation being made of such dwelling-house, and of the several interests in such dwelling-house, due regard being had to the nature and then condition of the property and the probable duration of the buildings in their existing state, and to the state of repair thereof, and without any additional allowance in respect of compulsory purchase ; and
 - (b.) The arbitrator shall have regard to and make an allowance in respect of any increased value which, in his opinion, will be given to other dwelling-houses of the same owner by the alteration or demolition by the local authority of any buildings.
- (3.) Evidence shall be receivable by the arbitrator to prove—
 - (1st.) That the rental of the dwelling-house was enhanced by reason of the same being used for illegal purposes or being so overcrowded as to be dangerous or injurious to the health of the inmates ; or

(2ndly.) That the dwelling-house is in a state of defective sanitation, or is not in reasonably good repair ; or

(3rdly.) That the dwelling-house is unfit, and not reasonably capable of being made fit, for human habitation ;

and, if the arbitrator is satisfied by such evidence, then the compensation—

(a.) Shall in the first case so far as it is based on rental be based on that rental which would have been obtainable if the dwelling-house was occupied for legal purposes and only by the number of persons whom the dwelling-house was under all the circumstances of the case fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates ; and

(b.) Shall in the second case be the amount estimated as the value of the dwelling-house if it had been put into a sanitary condition, or into reasonably good repair, after deducting the estimated expense of putting it into such condition or repair ; and

(c.) Shall in the third case be the value of the land, and of the materials of the buildings thereon.

(4.) On payment or tender to the person entitled to receive the same of the amount of compensation agreed or awarded to be paid in respect of the dwelling-house, or on payment thereof in manner prescribed by the Lands Clauses Acts, the owner shall, when required by the local authority, convey his interest in such dwelling-house to them, or as they may direct ; and in default thereof, or if the owner fails to adduce a

Sect. 41.

good title to such dwelling-house to the satisfaction of the local authority, it shall be lawful for the local authority, if they think fit, to execute a deed poll in such manner and with such consequences as are mentioned in the Lands Clauses Acts.

8 & 9 Vict.
c. 18.

- (5.) Sections thirty-two, thirty-three, thirty-five, thirty-six, and thirty-seven of the Lands Clauses Consolidation Act, 1845, shall apply, with any necessary modifications, to an arbitration and to an arbitrator appointed under this part of this Act.(a)
- (6.) The arbitrator may, by one award, settle the amount or amounts of compensation payable in respect of all or any of the dwelling-houses included in one or more order or orders made by the local authority: but he may, and, if the local authority request him so to do, shall, from time to time, make an award respecting a portion only of the disputed cases brought before him.
- (7.) In the event of the death, removal, resignation, or incapacity, refusal, or neglect to act of any arbitrator before he shall have made his award, the Local Government Board may appoint another arbitrator, to whom all documents relating to the matter of the arbitration which were in the possession of the former arbitrator shall be delivered.
- (8.) The arbitrator may, where he thinks fit, on the request of any party by whom any claim has been made before him, certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority.
- (9.) The arbitrator shall not give such certificate where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of such claim before the appointment of the arbitrator, and need not give such certificate to

any party where he considers that such party Sect. 41.
neglected, after due notice from the local authority,
to deliver to that authority a statement in writing
within such time, and containing such particulars
respecting the compensation claimed, as would have
enabled the local authority to make a proper offer
of compensation to such party before the appointment
of the arbitrator.

(10.) If within seven days after demand the amount so
certified be not paid to the party entitled to receive
the same, such amount shall be recoverable as a
debt from the local authority with interest at the
rate of five per cent. per annum for any time during
which the same remains unpaid after such seven
days as aforesaid.

(11.) The award of the arbitrator shall be final and
binding on all parties.

(a) *Ante*, pp. 70, 80.

Cf., the similar provisions in Part I of this Act, sections 20 and 21
and Schedule II., and notes thereto. As section 39 provides that the
order of the Local Government Board may incorporate the Lands
Clauses Acts, and as section 38 incorporates the compulsory clauses,
except as modified by this Act, the procedure will be according to these
Acts with the necessary modifications.

* * * * *

49. (1.) Where the owner of any dwelling-house and his Service of
notices.
residence or place of business are known to the local authority,
it shall be the duty of the clerk of the local authority, if the
residence or place of business is within the district of such
local authority, to serve any notice by this part of this Act
required to be served on the owner, by giving it to him, or
for him, to some inmate of his residence or place of business
within the district ; and in any other case it shall be the duty
of the clerk of the local authority to serve the notice by post
in a registered letter addressed to the owner at his residence
or place of business.

(2.) Where the owner of the dwelling-house or his resi-
dence or place of business is not known to, and after diligent

Sect. 49. inquiry cannot be found by the local authority, then the clerk of the local authority may serve the notice by leaving it, addressed to the owner, with some occupier of the dwelling-house, or if there be not an occupier, then by causing it to be put up on some conspicuous part of the dwelling-house.

(3.) Notice served upon the agent of the owner shall be deemed notice to the owner.

Description of owner in proceedings.

50. Where in any proceedings under this part of this Act it is necessary to refer to the owner of any dwelling-house, it shall be sufficient to designate him as the "owner" thereof without name or further description.

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PART III.

WORKING CLASS LODGING-HOUSES.

Adoption of Part III.

Definition of purposes of Labouring Classes Lodging Houses Acts.

53. (1.) The expression "lodging-houses for the working classes" when used in this part of this Act shall include separate houses or cottages for the working classes, whether containing one or several tenements, and the purposes of this part of this Act shall include the provision of such houses and cottages.

(2.) The expression "cottage" in this part of this Act may include a garden of not more than half an acre, provided that the estimated annual value of such garden shall not exceed three pounds.

Adoption of this part of Act.

54. This part of this Act may be adopted in the several districts mentioned in the First Schedule to this Act by the local authorities in that behalf in that schedule mentioned: Provided that in the case of any rural sanitary district in

England, the adoption shall be only after such certificate and Sect. 54. such delay as hereinafter mentioned.

The adoption here mentioned may be done apparently by resolution merely. It may be adopted by urban district councils, and in the county of London by the London County Council, and in the city by the Commissioners of Sewers, in rural districts by the rural district authority.

55. (1.) A rural sanitary authority in any district Provisions in case of adoption by rural sanitary authority. desiring to adopt this part of this Act may apply to the county council of the county in which the area hereinafter mentioned is wholly or as to the larger part thereof in extent situate for the certificate required for such adoption, and shall specify in such application the area in which they consider that accommodation is necessary for the housing of the working classes, and thereupon the county council shall direct a local inquiry to be held by a member of the council or any officer or person appointed by the council for the purpose, and if after such local inquiry the person holding the inquiry certifies that accommodation is necessary in such area for the housing of the working classes, and that there is no probability that such accommodation will be provided without the execution of this part of this Act, and that having regard to the liability which will be incurred by the rates, it is under all the circumstances prudent for the said authority to undertake the provision of the said accommodation under the powers of this part of this Act, the county council may, if they think fit, publish that certificate in one or more local newspapers circulating in the district, and thereupon the sanitary authority may adopt this part of this Act: Provided that—

- (a.) Unless the county council state in publishing such certificate that, by reason of the date of the next ordinary election of members of such authority or otherwise, an emergency renders it necessary to adopt this part of this Act immediately, such adoption in pursuance of the certificate shall not take place before the ordinary election of members of

Sect. 55.

such authority which is held next after the date of the local inquiry ; and

- (b.) After the end of twelve months from the date of the certificate, this part of this Act shall not be adopted without a fresh certificate ; and
- (c.) No land shall be acquired, nor buildings erected under this part of this Act outside of the area mentioned in the certificate except after a fresh application, inquiry, and certificate.

(2.) Where the rural sanitary authority think it just that the burden of the expenses of the execution of this part of this Act should be borne by some contributory place or places only in their district, instead of by the whole of their district, the authority may in their application to the county council request permission to limit the burden of such expenses to such contributory place or places, and thereupon the justice of such limitation shall be inquired into at the local inquiry, and the county council, if satisfied after the local inquiry that the circumstances of the contributory place or places and of the rest of the district render such limitation just, may make an order to that effect, and thereupon the expenses of the execution of this part of this Act in the area mentioned in the order shall be borne by the contributory place or places named in the order instead of by the whole district. The provisions of this enactment with respect to the burden of the expenses shall apply upon every application for a fresh certificate.

(3.) Any expenses incurred by a county council in holding a local inquiry under this part of this Act shall be a simple contract debt to the council from the rural sanitary authority, and shall be defrayed as part of the expenses of such authority in the execution of this part of this Act.

Execution of Part III. by Local Authority.

**Powers of
local
authority.**

56. Where this part of this Act has been adopted in any district, the local authority shall have power to carry it into

execution (subject to the provisions of this part of this Act Sect. 56. with respect to rural sanitary authorities), and for that purpose may exercise the same powers whether of contract or otherwise as in the execution of their duties in the case of the London County Council under the Metropolis Management Act, 1855, and the Acts amending the same, or in the case of sanitary authorities under the Public Health Acts, or in the case of the Commissioners of Sewers under the Acts conferring powers on such Commissioners.

57. (1.) Land for the purposes of this part of this Act may be acquired by a local authority in like manner as if those purposes were purposes of the Public Health Act, 1875, and sections one hundred and seventy-five to one hundred and seventy-eight, both inclusive, of that Act (relating to the purchase of lands), shall apply accordingly, and shall for the purposes of this part of this Act extend to London in like manner as if the Commissioners of Sewers and London County Council respectively were a local authority in the said sections mentioned, and a Secretary of State were substituted for the Local Government Board.

(2.) The local authority may, if they think fit, contract for the purchase or lease of any lodging-houses for the working classes already, or hereafter to be built and provided.

(3.) The local authority may, if not a rural sanitary authority with the consent of the Local Government Board, and if a rural sanitary authority with the consent of the county council of the county in which the land is situate, appropriate, for the purposes of this part of this Act, any lodging-houses so purchased or taken on lease, and any other land which may be for the time being vested in them, or at their disposal.

Sections 175—178 of the Public Health Act, 1875, will be found, *ante*, pp. 509—514. Section 176 incorporates the Lands Clauses Acts, and it enables the local authority to obtain compulsory powers by applying for a provisional order. There appears to be no definition as to what is to be the special Act, and as to what persons are to be the promoters of the undertaking under this part of the Act. Probably

Sect. 57. the provision as to this in section 316 of the Public Health Act, 1875, *ante*, p. 523, with the necessary modifications will apply. In this connection the following remarks of Lord BLACKBURN in the *Mayor of Portsmouth v. Smith*, 10 A. C. 364, p. 371, are important:—"Where a single section of an Act of Parliament is introduced into another Act, I think it must be read in the sense which it bore in the original Act from which it is taken, and that consequently it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the section meant, though those other sections are not incorporated in the new Act. I do not mean that if there was in the original Act a section not incorporated, which came by way of a proviso or exception on that which is incorporated, that should be referred to. But all others, including the interpretation clause, if there be one, may be referred to." Inasmuch as the Lands Clauses Acts are incorporated, the local authority taking land for the purposes of this part of the Act, will be liable to make good the deficiency in the poor's rate under section 133 of the Lands Clauses Act, *ante*, p. 287. *Vestry of St. Leonard's, Shoreditch v. London County Council*, 11 "Times" L. R. 420.

Local
authority
may pur-
chase
existing
lodging-
houses.

58. The trustees of any lodging-houses for the working classes for the time being provided in any district by private subscriptions or otherwise, may, with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the lodging-houses to the local authority of the district, or make over to them the management thereof.

Erection
of lodging-
houses.

59. The local authority may, on any land acquired or appropriated by them, erect any buildings suitable for lodging-houses for the working classes, and convert any buildings into lodging-houses for the working classes, and may alter, enlarge, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.

Sale and
exchange
of lands.

60. A local authority may, if not a rural sanitary authority with the consent of the Local Government Board, and if a rural sanitary authority with the consent of the county council of the county in which the land is situate, sell any land vested in them for the purposes of this part of this Act, and apply the proceeds in or towards the purchase of other land better adapted for those purposes, and may in like manner and with the like consent exchange any land so

vested in them for land better adapted to the purposes of Sect. 60.
 this part of this Act, either with or without paying or
 receiving any money for equality or exchange.

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PART IV.

SUPPLEMENTAL.

72. Where an official representation made to the London County Council in pursuance of Part I. of this Act relates to not more than ten houses, the London County Council shall not take any proceedings on such representation, but shall direct the medical officer of health making the same to represent the case to the local authority under Part II. of this Act, and it shall be the duty of the local authority to deal with such case in manner provided by that part of this Act.

Limit of
area to be
dealt with
on official
representa-
tion.

73. (1.) In either of the following cases :

Provisions
as to parts
of Act
under
which re-
ports are
to be dealt
with in
county of
London.

- (a.) Where a medical officer of health has represented to any local authority in the county of London under Part II. of this Act that any dwelling-houses are in a condition so dangerous or injurious to health, as to be unfit for human habitation, or that the pulling down of any obstructive buildings would be expedient, and such authority resolve that the case of such dwelling-houses or buildings is of such general importance to the county of London that it should be dealt with by a scheme under Part I. of this Act ; or
- (b.) Where an official representation as mentioned in Part I. of this Act has been made to the London County Council in relation to any houses, courts, or alleys within a certain area, and that council resolve that the case of such houses, courts, or alleys is not

Sect. 73.

of general importance to the county of London and should be dealt with under Part II. of this Act ;

such local authority or council may submit such resolution to a Secretary of State, and thereupon the Secretary of State may appoint an arbitrator, and direct him to hold a local inquiry, and such arbitrator shall hold such inquiry, and report to the Secretary of State as to whether, having regard to the size of the area, to the number of houses to be dealt with, to the position, structure, and sanitary condition of such houses, and of the neighbourhood thereof, and to the provisions of Part I. of this Act, the case is either wholly or partially of any and what importance to the county of London, with power to such arbitrator to report that in the event of the case being dealt with under Part II. of this Act, the London County Council ought to make a contribution in respect of the expense of dealing with the case.

(2.) The Secretary of State, after considering the report of the arbitrator, may, according as to him seems just, decide that the case shall be dealt with either under Part II. of this Act, or under Part I. of this Act, and the medical officer of health or other proper officer shall forthwith make the representation necessary for proceedings in accordance with such decision.

Amend-
ment of
45 & 46
Vict. c. 88,
as regards
erection of
buildings
for work-
ing classes.

74. (1.) The Settled Land Act, 1882, shall be amended as follows :—

- (a.) Any sale, exchange, or lease of land in pursuance of the said Act, when made for the purpose of the erection on such land of dwellings for the working classes, may be made at such price, or for such consideration, or for such rent, as having regard to the said purpose, and to all the circumstances of the case, is the best that can be reasonably obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose.

- (b.) The improvements on which capital money may be expended, enumerated in section twenty-five of the said Act, and referred to in section thirty of the said Act, shall, in addition to cottages for labourers, farm servants, and artizans, whether employed on the settled land or not, include any dwellings available for the working classes, the building of which in the opinion of the Court is not injurious to the estate. Sect. 74.

(2.) Any body corporate holding land may sell, exchange, or lease the land for the purpose of the erection of dwellings for the working classes at such price, or for such consideration, or for such rent as having regard to the said purpose and to all the circumstances of the case is the best that can reasonably be obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose.

As to the application of purchase money or compensation received by tenants for life, see *ante*, pp. 155—163.

* * * * *

77. Any person authorised by the local authority may at all reasonable times of the day, on giving twenty-four hours' notice in writing to the occupier of his intention so to do, enter any dwelling-house, premises, or building which the local authority are authorised to purchase compulsorily under Part I. and Part II. of this Act for the purpose of surveying and valuing such dwelling-house, premises, or building. Power to local authority to enter and value premises.

78. Where a building or any part of a building purchased by the local authority in pursuance of a scheme under Part I. or Part II. of this Act is not closed by a closing order, and is occupied by any tenant whose contract of tenancy is for less than a year, the local authority, if they require him to give up possession of such building or part for the purpose of pulling down the building, may make to the said tenant Compensation to tenants for expense of removal.

Sect. 78. a reasonable allowance on account of his expenses in removing.

Where the premises are to be closed, see section 32 (3), *ante*, p. 615.

* * * * *

Orders,
notices, &c.

86. (1.) An order in writing made by a local authority under this Act shall be under their seal and authenticated by the signature of their clerk or his lawful deputy.

(2.) A notice, demand, or other written document proceeding from the local authority under this Act shall be signed by their clerk or his lawful deputy.

Service of
notice, &c.,
on the
local
authority.

87. Any notice, summons, writ or other proceeding at law or otherwise required to be served on a local authority in relation to carrying into effect the objects or purposes of this Act, or any of them, may be served upon that authority by delivering the same to their clerk, or leaving the same at his office with some person employed there.

Prohibition
on
persons
interested
voting as
members
of local
authority.

88. (1.) A person shall not vote as member of a local authority or county council or any committee thereof upon any resolution or question which is proposed or arises in pursuance of Part I. or Part II. of this Act, if it relates to any dwelling-house, building, or land in which he is beneficially interested.

(2.) If any person votes in contravention of this section he shall, on summary conviction, be liable for each offence to a fine not exceeding fifty pounds; but the fact of his giving the vote shall not invalidate any resolution or proceeding of the local authority or county council.

Definition
of local
authority,
districts,
local rate.

92. In this Act, unless the context otherwise requires, "district," "local authority," and "local rate," mean respectively the areas, bodies of persons, and rates specified in the table contained in the First Schedule to this Act, but in Part III. of this Act and in reference to any power given by that part, or any act to be done in pursuance thereof shall

mean such area, bodies of persons, and rate only in cases Sect. 92. where that part of this Act is adopted or being adopted.

- 93.** In this Act, unless the context otherwise requires—
- | | |
|--|--|
| The expression "land" includes any right over land : | Definitions :
"Land." |
| The expression "sanitary district" means the district of a sanitary authority : | "Sanitary district." |
| The expression "sanitary authority" means an urban sanitary authority or a rural sanitary authority : | "Sanitary authority." |
| The expressions "urban sanitary authority" and "rural sanitary authority" and "contributory place" have respectively the same meanings as in the Public Health Act, 1875 : | "Urban and rural sanitary authority ;"
"contributory place."
"Superior Court." |
| The expression "superior Court" means the Supreme Court : | |
| The expression "county of London," except where specified to be the administrative county of London, means the county of London exclusive of the city of London. | "County of London." |

SECOND SCHEDULE.

PROVISIONS WITH RESPECT TO THE PURCHASE AND TAKING OF LANDS Section 20.
IN ENGLAND OTHERWISE THAN BY AGREEMENT, AND OTHERWISE
AMENDING THE LANDS CLAUSES ACTS.

These provisions are taken from the schedules to the Artizans Dwellings Improvement Acts, 1875, 1879, and 1882.

Deposit of Maps and Plans.

- (1.) The local authority shall as soon as practicable after the passing of the confirming Act cause to be made out, and to be signed by their clerk or some other principal officer appointed by them, maps and schedules of all lands proposed to be taken compulsorily (which lands are hereinafter referred to as the scheduled lands), together with the names, so far as the same can be reasonably ascertained, of all persons
- 1—4.
38 & 39
Vict. c. 36,
Sched.

Sched. interested in such lands as owners or reputed owners, lessees or reputed lessees, or occupiers.

(2.) The maps made by the local authority shall be upon such scale and be framed in such manner as may be prescribed by the confirming authority.(a)

(3.) The local authority shall deposit such maps and schedules at the office of the confirming authority,(a) and shall deposit and keep copies of such maps and schedules at the office of the local authority.

(a) The confirming authority is in the city and county of London the Secretary of State, in other places the Local Government Board. Section 8, sub-secta. (1) and (2).

Appointment of Arbitrator.

(4.) After such deposit at the office of the confirming authority as aforesaid, it shall be lawful for the confirming authority, upon the application of the local authority, to appoint an arbitrator between the local authority, and the persons interested in such of the scheduled lands, or lands injuriously affected by the execution of such scheme, so far as compensation for the same has not been made the subject of agreement.

Proceedings on Arbitration.

45 & 46 (5.) Before any arbitrator enters upon any inquiry he shall, in the
Vict. c. 54, presence of a justice of the peace, make and subscribe the following
Sched. (1.) declaration ; that is to say,
a-f,

“I, A. B., do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Housing of the Working Classes Act, 1890.

A. B.

“Made and subscribed in the presence of .”

And such declaration shall be annexed to the award when made; and if any arbitrator, having made such declaration, wilfully act contrary thereto, he shall be guilty of a misdemeanor.

Cf., the similar proviso in section 33 of the Lands Clauses Act, 1845, *ante*, p. 72, and see the notes thereto.

(6.) As soon as an arbitrator has been appointed as aforesaid, the confirming authority shall deliver to him the maps and schedules

deposited at their office, and the local authority shall publish once in each of three successive weeks the following particulars :— Sched.

- (1.) The appointment of the arbitrator ; and
- (2.) The deposit at the office of the local authority of the copies of such maps and schedules as aforesaid, with a description of the situation of such office, and a statement of the time at which such copies may be inspected by any person desirous of inspecting the same.

Such publication shall be made not only by advertisement, but also by placards and handbills affixed in conspicuous places on or near the lands to be taken, and also by leaving a notice thereof at each house proposed to be taken, and also by sending a notice thereof by post to the persons interested in such lands as owners or reputed owners, lessees or reputed lessees, so far as they can be reasonably ascertained. 42 & 43
Vict. c. 63,
Art. 1.

(7.) In every case in which compensation is payable under Part I. of this Act, by the local authority to any claimant, and which compensation has not been made the subject of agreement (in this Act referred to as “a disputed case”), the arbitrator shall ascertain in such manner as he thinks most convenient the amount of compensation demanded by the claimant, and the amount which the local authority may be willing to pay ; and after hearing all such parties interested in each disputed case as may appear before him at a time and place of which notice has been given as in Part I. of this Act mentioned, he shall proceed to decide on the amount of compensation to which he may consider the claimant to be entitled in each case.

Cf., section 7, *ante*, p. 600, and article 32 of this schedule, *infra*.

(8.) The arbitrator shall give notice to the claimants in disputed cases by causing such notice to be published or otherwise in such manner as he thinks advisable, at a time and place at which the difference between the claimants and the local authority in disputed cases as to the amount of compensation to be paid will be decided by the arbitrator.

(9.) After the arbitrator has arrived at a decision on all the disputed cases brought before him he shall make an award under his hand and seal, and such award shall be final, and be binding and conclusive (subject to the provisions concerning an appeal hereinafter contained) upon all persons whomsoever, and no such award shall be set aside for irregularity in matter of form, but the arbitrator may and, if the local authority request him so to do, shall from time to time make an award respecting a portion only of the disputed cases brought before him.

Sched.

(10.) Such award as aforesaid shall be deposited at the office of the confirming authority, and a copy thereof shall be deposited at the office of the local authority, and the local authority shall thereupon publish once in each of three successive weeks notice of the deposit having been made at the office of the local authority of a copy of the award, and a further notice requiring all persons claiming to have any right to or interest in the lands (the compensation to be paid in respect of which is ascertained by such award) to deliver to the local authority on or before a day to be named in such notice (such day not being earlier than twenty-one days from the date of the last publication of the notice), a short statement in writing of the nature of such claim, and a short abstract of the title on which the same is founded; and such statement and abstract shall be paid for by the local authority. Such abstract of title, in the case of a person claiming a fee simple interest in the land, shall commence twenty years previous to the date of the claim, except there has been an absolute conveyance on sale within twenty years, and more than ten years previous to the claim when the abstract shall commence with such conveyance.

Under the Artizans Dwellings Improvement Act, 1875, the arbitrator was required to frame a provisional award. In one case where a claim had been sent to the local authority, but by mistake not transmitted to the arbitrator, and the provisional award was made without this claim being included, but the arbitrator afterwards heard the claim and altered the provisional award, it was held that the irregularity was merely formal, and the final award was held to be good. *Carr v. Metropolitan Board of Works*, 14 Ch. D. 807. Under the same schedule it was held that the property did not pass until the final award had been made. *Barnet v. Metropolitan Board of Works*, 46 L. T. 384. The provisions as to the award in the 1875 Act were altered to their present form by the Artizans Dwellings Improvement Act, 1882.

Special Powers of Arbitration.

Power of
arbitrator
as to
apportion-
ment.

42 & 43

Vict. c. 63,
Sched. (2).

(11.) The arbitrator shall have the same power of apportioning any rentservice rentcharge, chief or other rent, payment, or incumbrance, or any rent payable in respect of lands comprised in a lease, as two justices have under the Lands Clauses Consolidation Act, 1845.(a)

(a) See section 98, *ante*, p. 251; section 116, *ante*, p. 264; section 119, *ante*, p. 266.

Amend-
ment re-
specting
severance
of proper-
ties.
8 & 9 Vict.
c. 18, s. 92.

(12.) Notwithstanding anything in section ninety-two of the Lands Clauses Consolidation Act, 1845,(a) the arbitrator may determine that such part of any house, building, or manufactory as is proposed to be taken by the local authority can be taken without material damage to such house, building, or manufactory, and if he so determine may award compensation in respect of the severance of the part so proposed

to be taken, in addition to the value of that part, and thereupon the party interested shall be required to sell and convey to the local authority such part, without the local authority being obliged to purchase the greater part or the whole of such house, building, or manufactory. Sched. 42 & 43
Vict. c. 63,
Sched. (3).

The local authority, or any person interested, if dissatisfied with a determination under this enactment, may, in manner provided with respect to appeals to a jury in respect of compensation for land by this schedule, (b) submit the question of whether the said part can be taken without material damage, as well as the question of the proper amount of compensation, to a jury ; and the notice of intention to appeal shall be given within the same time as notice of intention to appeal against the amount of compensation awarded is required to be given.

(a) See *ante*, p. 238.

(b) Arts. 26 and 27, *infra*.

(13.) The amount of purchase money or compensation to be paid in pursuance of section one hundred and twenty-four of the Lands Clauses Consolidation Act, 1845, (a) in respect of any estate, right, or interest in or charge affecting any of the scheduled lands which the local authority have through mistake or inadvertence failed or omitted duly to purchase or make compensation for, shall be awarded by the arbitrator and be paid, in like manner, as near as may be, as the same would have been awarded and paid if the claim of such estate, right, interest, or charge had been delivered to the arbitrator before the day fixed for the delivery of statements of claims. Omitted
interests.
42 & 43
Vict. c. 63,
Sched. (4).

If the arbitrator is satisfied that the failure or omission to purchase the said estate, right, interest, or charge, arose from any default on the part either of the claimant or of the local authority, he may direct the costs to be paid by the party so in default.

(a) *Ante*, p. 272.

Payment of Purchase Money.

(14.) Within thirty days from the delivery of such statement and abstract as aforesaid to the local authority, the local authority shall, where it appears to them that any person so claiming is absolutely entitled to the lands, estate, or interest claimed by him, deliver to such person, on demand, a certificate stating the amount of the compensation to which he is entitled under the said award. Arts. 14—
24.
See 38 & 39
Vict. c. 36,
Sched.

(15.) Every such certificate shall be prepared by and at the cost of the local authority ; and where any agreement has been entered into as to the compensation payable in respect of the interest of any person in any lands, the local authority may, where it appears to them that such person is absolutely entitled, deliver to such person a like certificate.

Sched. (16.) The local authority shall, thirty days after demand, pay to the party to whom any such certificate is given, or otherwise as herein provided in the cases hereinafter mentioned, the amount of moneys specified to be payable by such certificate to the party to whom or in whose favour such certificate is given, his or her executors, administrators, or assigns.

(17.) If the local authority wilfully make default in such payment as aforesaid, then the party named in such certificate shall be entitled to enter up judgment against the local authority in the High Court, for the amount of the sums specified in such certificate, in the same manner in all respects as if he had been, by warrant of attorney from the local authority, authorised to enter up judgment for the amount mentioned in the certificate, with costs, as is usual in like cases; and all moneys payable under such certificates, or to be recovered by such judgments as aforesaid, shall at law and in equity be taken as personal estate as from the time of the local authority entering on any such lands as aforesaid.

(18.) When and so soon as the local authority have paid to the party to whom any such certificate as aforesaid is given, or otherwise, as herein provided, in the cases hereinafter mentioned, the amount specified to be payable by such certificate to the party to whom or in whose favour the certificate is given, his executors, administrators, or assigns, it shall be lawful for the local authority, upon obtaining such receipt as hereinafter mentioned, from time to time to enter upon any lands in respect of which such certificate is given, and thenceforth to hold the same for the estate or interest in respect of which the amount specified in such certificate was payable.

(19.) In every case in which any moneys are paid by any local authority under this Act for such compensation as aforesaid, the party receiving such moneys shall give to the local authority a receipt for the same, and such receipt shall have the effect of a grant, release, and conveyance of all the estate and interest of such party, and of all parties claiming under or through him, in the lands in respect of which such moneys are paid, provided such receipt has an *ad valorem* stamp of the same amount impressed thereon in respect of the purchase money mentioned in such certificate as would have been necessary if such receipt had been an actual conveyance of such estate or interest, every such receipt to be prepared by and at the cost of the local authority.

(20.) If it appear to the local authority, from any such statement and abstract as aforesaid, or otherwise, that the person making any such claim as aforesaid is not absolutely entitled to the lands, estate, or

Sched.

interest in respect of which his claim is made, or is under any disability, or if the title to such lands, estate, or interest be not satisfactorily deduced to the local authority, then and in every such case the amount to be paid by the local authority in respect of such lands, estate, or interest as aforesaid shall be paid and applied as provided by the clauses of the Lands Clauses Consolidation Act, 1845, as amended by the Court of Chancery Funds Act, 1872, "with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title."

(21.) Where any person claiming any right of interest in any lands refuses to produce his title to the same, or where the local authority have under the provisions of Part I. of this Act taken possession of any lands in respect of the compensation whereof, or of any estate or interest wherein, no claim has been made within one year from the time of the local authority taking possession, or if any party to whom any such certificate has been given or tendered refuses to receive such certificate, or to accept the amount therein specified as payable to him, then and in any such case the amount payable by the local authority in respect of such lands, estate, or interest, or the amount specified in such certificate, shall be paid into the Bank of England, in manner provided by the last-mentioned clauses of the Lands Clauses Consolidation Act, 1845, as amended by the Court of Chancery Funds Act, 1872, and the amount so paid into the said bank shall be accordingly dealt with as by the said Act provided.

(22.) Nothing herein contained shall prevent the local authority from requiring any further abstract or evidence of title respecting any lands included in any such award as aforesaid, in addition to the abstract or statement hereinbefore mentioned, if they think fit, so as the same be obtained at the cost of the local authority.

(23.) If from any reason whatever the local authority does not deliver the certificate aforesaid to any party claiming to be entitled to any interest in any lands the possession whereof has been taken by the local authority as aforesaid, then the right to have a certificate according to the provisions of this Act may, at the cost and charge of the local authority, be enforced by any party or parties, by application to the High Court, in a summary way by petition, and all other rights and interests of any party or parties arising under the provisions of this Act may be in like manner enforced against the local authority by such application as aforesaid.

It was held that the corresponding provisions in the schedule to the Artizans Dwellings Improvement Act, 1875, enabled a local authority

Sched. to enter into possession after payment to the party entitled, or after payment into Court of the sum awarded by the arbitrator. *In re Shaw and the Corporation of Birmingham*, 27 Ch. D. 614.

Entry on Lands on Making Deposit.

(24.) Where the local authority are desirous, for the purposes of their works, of entering upon any lands before they would be entitled to enter thereon under the provisions hereinbefore contained, it shall be lawful for the local authority, at any time after the arbitrator has framed his award, upon depositing in the Bank of England such sum as the arbitrator may certify to be in his opinion the proper amount to be so deposited in respect of any lands authorised to be purchased or taken by the local authority, and mentioned in such award, to enter upon and use such lands for the purposes of the improvement scheme of the local authority: and the arbitrator shall, upon the request of the local authority at any time after he has framed such award, certify under his hand the sum which, in his opinion, should be so deposited by the local authority in respect of any lands mentioned in such award before they enter upon and use the same as aforesaid, and the sum to be so certified shall be the sum or the amount of the several sums set forth in such award as the sum or sums to be paid by the local authority in respect of such lands, or such greater amount as to the arbitrator, under the circumstances of the case, may seem proper; and, notwithstanding such entry as aforesaid, all proceedings for and in relation to the completion of the award, the delivery of certificates, and other proceedings under Part I. of this Act, shall be had, and payments made, as if such entry and deposit had not been made;

Provided that the local authority shall, where they enter upon any lands by virtue of this present provision, pay interest at the rate of five pounds per centum per annum upon the compensation money payable by them in respect of any lands so entered upon, from the time of their entry until the time of the payment of such money and interest to the party entitled thereto, or where, under the provisions of Part I. of this Act, such compensation is required to be paid into the Bank of England, then until the same, with such interest, is paid into such bank accordingly; and where under this provision interest is payable on any compensation money the certificate to be delivered by the local authority in respect thereof shall specify that interest is so payable, and the same shall be recoverable in like manner as the principal money mentioned in such certificate.

As to costs on payment out of Court, the same rule will apply as under the Lands Clauses Act, 1845. *Ex parte Jones*, 43 L. T. 84; and see notes to section 80, *ante*, p. 193.

Sched.
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(25.) The money so deposited as last aforesaid shall be paid into the Bank of England to such account as may from time to time be directed by any regulation or Act for the time being in force in relation to moneys deposited in the bank in similar cases, or to such account as may be directed by any order of the High Court, and remain in the bank by way of security to the parties interested in the lands which have been so entered upon for the payment of the money to become payable by the local authority in respect thereof under the award of the arbitrator; and the money so deposited may, on the application by petition of the local authority, be ordered to be invested in Bank Annuities or Government securities, and accumulated: and upon such payment as aforesaid by the local authority it shall be lawful for the High Court, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the local authority, or, in default of such payment as aforesaid by the local authority, it shall be lawful for the said Court to order the same to be applied in such manner as it thinks fit for the benefit of the parties for whose security the same shall so have been deposited.

Cf. sections 85—91 of the Lands Clauses Act, 1845, *ante*, pp. 222—237.

Appeal.

(26.) In the following cases, namely,—

See 45 & 46
Vict. c. 54,
Sched. (G).

- (a.) Where the party named in any certificate issued under the provisions hereinbefore contained of the amount of the compensation ascertained by any award under Part I. of this Act (or any party claiming under the party so named) is dissatisfied with the amount in such certificate certified to be payable, and such amount exceeds one thousand pounds, and
- (b.) Where any party claiming any interest in any moneys so paid into court as aforesaid is dissatisfied with the amount of the price or compensation in respect of which such moneys are paid into court, and such amount exceeds one thousand pounds; also
- (c.) Where the local authority is dissatisfied with the amount of compensation which the arbitrator appointed under the provisions of Part I. of this Act has awarded to be paid by the local authority to any person in respect of any estate or interest in lands, and such amount exceed the sum of one thousand pounds:

the party dissatisfied may, upon obtaining the leave of the High Court, which leave may be granted by such Court or any judge thereof at

Sched. chambers in a summary manner, and upon being satisfied that a failure of justice will take place if the leave is not granted, submit the question of the proper amount of compensation to a jury, provided that such party give notice in writing to the other party of their intention to appeal within ten days after the cause of appeal has arisen.

The cause of appeal shall be deemed to have arisen,—

- (1.) Where a certificate has been issued as aforesaid, at the date of the issue of the certificate ;
- (2.) Where moneys have been paid into Court, at the date of the payment into Court ;
- (3.) Where the local authority appeals, at the date of the making of the award.

"Failure of Justice."—Leave to appeal from an arbitrator's award will not be given merely on the affidavits of valuers who swear that in their opinion the amount awarded is less than the true value, nor even if the Court disagree with the figures of the arbitrator. The Court must be satisfied that a failure of justice will take place, but in order to establish such failure it is not necessarily to show some mistake in law, although such mistake as the wrong admission or exclusion of evidence would be sufficient. *Ex parte Larnuth and Lees*, 10 "Times" L. R. 225 ; *Ex parte Birch* [1894], 2 Ir. R. Q. B. D. 181. In the latter of these cases the Court also expressed the opinion that a claimant to whom several sums have been awarded each less than 100*l.*, but in the aggregate exceeding that sum, in respect of an estate held under the same title, may be given leave to appeal.

The procedure to obtain leave to appeal would appear to be either by motion, notice being given, or by summons in chambers. See the above cases. Whether the application is made in chambers or in Court there is no appeal to a Higher Court. *Ex parte Stevenson*, [1892], 1 Q. B. 394, 609.

(27.) Where a notice has been given under Part I. of this Act of an appeal to a jury in respect of compensation for land, or any interest in land, a question of disputed compensation required to be determined by the verdict of a jury shall be deemed to have arisen within the meaning of the Lands Clauses Consolidation Act, 1845, and all the provisions of that Act contained in sections thirty-eight to fifty-seven,^(a) both inclusive, shall be deemed to apply, except sections forty-seven and fifty-one : Provided also, that—

- (1.) Where the local authority appeals that authority shall be deemed to be the plaintiff and the party entitled to compensation to be the defendant ; and
- (2.) Where the party claiming compensation appeals, then, in case the verdict of the jury is for a sum exceeding the award of the arbitrator, the local authority shall pay to such party the cost

of the trial, such costs to be taxed and ascertained in the same manner as costs are by law ascertained on the trial of issues tried in the High Court ; but in case the verdict of the jury is for a sum not exceeding the award of the arbitrator, the party appealing shall pay to the local authority the costs of the trial to be taxed and ascertained in manner aforesaid. Sched.

(3.) Where the local authority is the appellant,—

(a.) Notwithstanding the verdict of the jury may be for a sum less than that awarded by the arbitrator, the local authority shall pay to the other party such sum not exceeding twenty pounds for the costs of the trial as the sheriff or other officer before whom the same is tried shall direct ; and

(b.) In case the verdict of the jury is for a sum equal to or exceeding the award of the arbitrator, the local authority shall pay to the other party the costs of the trial, such costs to be taxed and ascertained in manner aforesaid.

(c.) The amount of compensation awarded by the arbitrator shall not be communicated to the jury, but they shall be required to make an independent assessment of the amount of compensation to which the party claiming compensation is entitled.

(a.) *Ante*, pp. 83—107.

Where a sum of money has been paid into Court by a local authority under the award of an arbitrator and on appeal a larger sum is awarded by the verdict of a jury, and the difference is afterwards paid into Court, interest at the rate of 4 per cent. is payable on the difference from the date of the first payment in to the date of the second. *In re Shaw and the Corporation of Birmingham*, 27 Ch. D. 614.

Costs of Arbitration.

(28.) The salary or remuneration, travelling, and other expenses of the arbitrator, and all costs, charges, and expenses (if any) which may be incurred by the confirming authority in carrying the provisions of Part I. of this Act into execution, shall, after the amount thereof shall have been certified under this article, be paid by the local authority ; and the amount of such costs, charges, and expenses shall from time to time be certified by the confirming authority after first hearing any objections that may be made to the reasonableness of any such costs, charges, and expenses by or on behalf of the local authority ; and every certificate of the said confirming authority certifying the amount of such costs, charges, and expenses shall be taken as proof in all proceedings at law or in equity of the amount of such respective costs, charges, and expenses, and the amount so certified shall be a debt due

See 45 & 46
Vict. c. 54,
Sched. (H).

Sched. from the local authority to the Crown, and shall be recoverable accordingly.

Further, any such certificate may be made a rule of a superior court on the application of any party named therein, and may be enforced accordingly.

(29.) (1.) It shall be lawful for the arbitrator, where he thinks fit, upon the request of any party by whom any claim has been made before him, to certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority ;

See 45 & 46
Vict. c. 64,
Sched. (I). Provided that—

(a.) The arbitrator shall not be required to certify the amount of costs in any case where he considers such costs are not properly payable by the local authority ;

(b.) The arbitrator shall not be required to certify the amount of costs incurred by any party in relation to the arbitration, in any case where he considers that such party neglected, after due notice from the local authority, to deliver to that authority a statement in writing within such time, and containing such particulars respecting the compensation claimed, as would have enabled the local authority to make a proper offer of compensation to such party before the appointment of the arbitrator.

(c.) No certificate shall be given where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of the claim before the appointment of the arbitrator.

(2.) If within seven days after demand the amount certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from the local authority with interest at the rate of 5 per cent. per annum for any time during which the same remains unpaid after such seven days as aforesaid.

Miscellaneous.

(30.) The arbitrator may call for the production of any documents in the possession or power of the local authority, or of any party making any claim under the provisions of Part I. of this Act, which such arbitrator may think necessary for determining any question or matter to be determined by him under Part I. of this Act, and may examine any such party and his witnesses, and the witnesses for the local authority, on oath, and administer the oaths necessary for that purpose.

(31.) If any arbitrator appointed in pursuance of Part I. of this Act die, or refuse, decline, or become incapable to act, the confirming

Sched.

authority may appoint an arbitrator in his place, who shall have the same powers and authorities as the arbitrator first appointed ; and upon the appointment of any arbitrator in the place of an arbitrator dying, or refusing, declining, or becoming incapable to act, all the documents relating to the matter of the arbitration which were in the possession of such arbitrator shall be delivered to the arbitrator appointed in his place, and the local authority shall publish notice of such appointment in the " London Gazette."

(32.) All notices required by this schedule to be published shall be published in some one and the same newspaper circulating within the jurisdiction of the local authority, and where no other form of service is prescribed all notices required to be served or given by the local authority under this schedule or otherwise upon any persons interested in or entitled to sell lands, shall be served in manner in which notices of lands proposed to be taken compulsorily for the purpose of an improvement scheme are directed by Part I. of this Act to be served upon owners or reputed owners, lessees or reputed lessees, and occupiers.(a)

(a) See section 7, *ante*, p. 600.

The remaining articles of the schedule contain provisions applying the procedure to Scotland and Ireland.

THE PARLIAMENTARY DEPOSITS AND BONDS ACT, 1892.

55 & 56 VICT. CAP. 27.

*An Act to authorise the release of certain Deposits, and the
cancellation of certain Bonds, made or given to secure the
performance of undertakings authorised by Parliament.*

[27th June, 1892.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Sect. 1.
Power to
release
deposits.

1. (1.) Where in pursuance of any general or special Act of Parliament, or of any rules made thereunder, moneys or securities have been deposited with, or are standing in the name of, the Paymaster-General to secure the completion by any company of any undertaking authorised by Parliament, or by any certificate issued under the authority of an Act of Parliament, and the undertaking has not been completed within the time limited in that behalf, the High Court may, notwithstanding anything in any such general or special Act or rules, order that the moneys or securities (in this Act called the deposit fund), or any part thereof, be applied towards compensating any landowners or other persons whose property has been interfered with or otherwise rendered less valuable by the commencement, construction, or abandonment of the undertaking, or any portion thereof, or who have been subjected to injury or loss in consequence of any compulsory powers of taking property given in connection with the undertaking, and have received no compensation or inadequate compensation for such injury or loss ; and also, in the case of a tramway company, towards compensating the

road authorities for the expenses incurred by them in taking up any tramway or materials connected therewith placed by the tramway company in or on any road vested in or maintainable by the road authorities, and in making good all damage caused to such roads by the construction or abandonment of the tramway. Sect. 1.

(2.) Subject to payment of any such compensation, and notwithstanding any provision as to forfeiture to the Crown, the High Court may, if a receiver has been appointed, or the company is insolvent and has been ordered to be wound up, or the undertaking has been abandoned, order that the deposit fund or any part thereof be paid or transferred to the receiver or to the liquidator of the company, or be applied as part of the assets of the company for the benefit of the creditors thereof,

(3.) Subject to such application as aforesaid the High Court may, after such public notice as to the Court seems reasonable, order that the deposit fund or any part thereof be paid or transferred to the depositors or the persons claiming through or under them, .

(4.) If any money or securities deposited with or standing in the name of the Paymaster-General for the purposes of this section on or before the thirty-first of March, one thousand eight hundred and ninety, are not claimed by or on behalf of the depositors thereof within ten years after the passing of this Act, the Treasury may pay or transfer the same to the National Debt Commissioners to be applied by them towards the reduction of the National Debt.

(5.) This section shall apply to any person or body of persons authorised by Parliament or by any such certificate as aforesaid to carry out an undertaking as if he or they were a company.

As the terms and provisions of the Railway Abandonment Acts (see ante, p. 418) do not appear to apply to railways formed since 1867, the decisions as to compensation to landowners when a railway has been abandoned have turned mainly on the construction of the special Act authorising the abandonment, and upon the provisions as to the distri-

Sect. 1. bution of the parliamentary deposit. It was usual to insert in the Act authorising the abandonment, a proviso that the deposit shall be applicable towards compensating any landowners or other persons whose property may have been interfered with, or otherwise rendered less valuable by the commencement, construction, or abandonment of the railway, or any portion, or who may have been subjected to injury or loss in consequence of the compulsory powers of taking property conferred upon the company by the Act authorising the railway, and for which injury or loss no compensation or inadequate compensation shall have been paid.

It will be seen that section 1 (1) of this Act is in almost identical terms, and that the provision is now made applicable to all parliamentary deposits when the undertaking is abandoned.

It has been held under the provision above mentioned in a special Act that the words "commencement, construction, or abandonment" were disjunctive, and that the diminution in value must be estimated by comparing the value of the land immediately before and its value immediately after the abandonment. *In re Potteries, Shrewsbury, and North Wales Railway Company*, 25 Ch. D. 251. It would appear that the compensation is not confined to loss occasioned by the action of the company under its statutory powers alone, but that if the company have entered into covenants with a landowner to do certain acts, such as to make a station on his land, or to erect a fence, and if the abandonment of the railway makes the performance of these covenants impossible, that the consequent loss may be taken into account in estimating the deterioration of the value of the land. The landowner must, however, prove that the breaches of covenant do in fact deteriorate the value of the land. *In re Ruthin and Cerrig-y-Druoidion Railway Act*, 32 Ch. D. 438.

Where a landowner had commenced works on his own land before a railway company had obtained their Act on the speculation that they would obtain power to construct the railway, and that his works would be utilized in the construction of the railway, and the company afterwards obtained their Act, but the railway was abandoned, it was held that the landowner, while having no claim for compensation in respect of injury by the commencement or construction of the railway, had a claim for compensation for injury done by the abandonment, and that his land was depreciated by having an embankment on it, which had become useless, and which before the abandonment was of value. *In re Potteries, Shrewsbury and North Wales Railway Company*, 25 Ch. D. 251.

In the same case it was held that mortgagees of the land might be persons entitled to claim compensation under the Act. It is usual for the Court to order an enquiry as to what landowners and other persons there are whose lands have been injured by the commencement, construction, or abandonment of the railway. See form of order, S. C., p. 263.

In the case of *In re Uzbridge and Rickmansworth Railway Company*, 43 Ch. D. 536, three claims were made by three different landowners to be entitled to priority to the other creditors under the provisions of the special Act, which were similar in effect to this Act, as persons who had been subjected to injury or loss in consequence of the compulsory powers of taking property conferred upon the company. In one of these cases, *Grainge's Case*, the company had served a notice to treat on Grainge, the landowner, in reply to which he had delivered particulars of his estate

Sect. 1.

and the amount he claimed as purchase money. Nothing further was done, and his claim in this case was for the costs and charges of surveyors and solicitors incurred in consequence of the notice. In the next case, *Harman's Case*, the company had also served a notice to treat, which had been followed by legal proceedings, and by an agreement by the company to purchase the land, and to pay preliminary and other costs of solicitors and surveyors. The purchase was not completed, and the claim in this case was for the various costs and charges incurred. In the third case, *Way's Case*, the claim was for compensation and damages for the non-completion of an agreement to purchase land, and for the costs and charges incurred in consequence. The Court held that the service of a notice to treat was not an exercise of compulsory powers, following in this respect *Guest v. Poole and Bournemouth Railway Company*, L. R. 5 C. P. 553, and that the landowners were not entitled to any priority in consequence of any loss caused by its service, and further that the landowners had not suffered any loss in consequence of the notice to treat. They were allowed to rank as ordinary creditors for any claim they could prove.

2. Where in pursuance of any general or special Act of Parliament any bond has been given to secure the completion of any undertaking authorised by Parliament, or by any certificate issued under the authority of an Act of Parliament, and the undertaking has not been completed within the time limited in that behalf, the money thereby secured shall be applicable to the same purposes as the deposit fund hereinbefore mentioned, and the Treasury may, if they think fit, cancel the bond on proof to their satisfaction that the money thereby secured has been applied or is not required for those purposes.

3, 4.

Sections 3 and 4 extend the Act to Scotland and Ireland.

THE MILITARY LANDS ACT, 1892.

55 & 56 VICT. CAP. 43.

An Act to consolidate and amend certain enactments relating to the Acquisition of Land for Military Purposes.

[27th June, 1892.]

This Act consolidates and amends various statutes dealing with the acquisition of lands for the building and enlarging of barracks and camps, and for the erection of butts and the providing of ranges and for drill grounds. By section 28, it repeals various enactments dealing with the acquisition of lands for these purposes. The enactments repealed are:—Section 1 of the Defence Act, 1859 (22 Vict. c. 12), which enabled the Secretary of State to acquire rights of common; sections 31—40 of the Volunteer Act, 1863 (26 & 27 Vict. c. 65), which dealt with the acquisition of land for ranges for volunteers; section 17 of the Regulation of the Forces Act, 1871, which amended these sections of the Volunteer Act, 1863; the whole of the Artillery and Rifle Ranges Act, 1886 (48 & 49 Vict. c. 36), except section 3, for which see note to section 13 of this Act, *infra*; the whole of the Drill Grounds Act, 1886 (49 & 50 Vict. c. 5); sections 2 and 3 of the Barracks Act, 1890 (53 & 54 Vict. c. 25), which sections enabled the Secretary of State to purchase lands for purposes similar to this Act, and the whole of the Ranges Act, 1891 (54 & 55 Vict. c. 54), except section 11, in so far as it amends the Defence Act, 1842, for which see Appendix.

PART I.

Acquisition of Land for Military Purposes.

Sect. 1.
Power to
purchase
land.

1. (1.) A Secretary of State may purchase land in the United Kingdom under this Act, for the military purposes of any portion of Her Majesty's military forces.

(2.) A volunteer corps may, with the consent of the Secretary of State, themselves purchase land under this Act for military purposes.

(3.) The council of a county or borough may, at the request of one or more volunteer corps, purchase under this

Act, and hold, land on behalf of the volunteer corps for Sect. 1. military purposes.

(4.) The Secretary of State shall, before giving his consent to the purchase of any land under this Act by a volunteer corps, send an inspector to the land for the purpose of ascertaining its capabilities of being used for military purposes with due regard to the safety and convenience of the public, and shall give or withhold his consent accordingly.

2. For the purpose of the purchase of land under this Act, ^{Machinery} the Lands Clauses Acts shall be incorporated with this Act, ^{for pur-} with the exceptions and additions and subject to the pro- ^{chase of} ^{land.} visions following ; (that is to say,)

(1.) There shall not be incorporated with this Act sections sixteen or seventeen of the Lands Clauses Consolidation Act, 1845,(a) or the provisions of that Act with respect to affording access to the special Act.(b)

(2.) In the construction of this Act and the incorporated Acts, this Act shall be deemed to be the special Act, and the Secretary of State, volunteer corps, or council of a county or borough, as the case may be (in this section referred to as "the purchaser"), shall be deemed to be the promoters of the undertaking.

(3.) Where the Secretary of State is the purchaser—

(a.) The bond required by section eighty-five of the Lands Clauses Consolidation Act, 1845,(c) shall be under the seal of the Secretary of State, and shall be sufficient without the addition of the sureties in those sections mentioned.

(b.) When compensation has been paid to any person in respect of any estate or interest in land taken under this Act, the land shall vest in the Secretary of State for all the estate and interest of that person, including

Sect. 2.

any estate or interest therein held in trust by that person or capable of being conveyed by him in pursuance of any power. Nevertheless the Secretary of State may require that person to execute any conveyance which he might have been required to execute if this Act had not passed ; and nothing in this section shall in any manner invalidate any such conveyance when executed.

- (4.) The provisions of the incorporated Acts with respect to the purchase of land compulsorily shall not be put in force until a provisional order has been made and the sanction of Parliament has been obtained in manner in this Act mentioned.
- (5.) One month at the least before the making of the provisional order, if the Secretary of State is the purchaser, and before the application for the order in any other case, the purchaser shall serve, in manner provided by the Lands Clauses Acts, a notice on every owner or reputed owner, lessee or reputed lessee, and occupier of any land intended to be so purchased, describing the land intended to be taken, and in general terms the purposes to which it is to be applied, and stating the intention of the purchaser to obtain the sanction of Parliament to the purchase thereof, and inquiring whether the person so served assents or dissents to the taking of his land, and requesting him to forward to the purchaser any objections he may have to his land being taken.
- (6.) Where the Secretary of State is the purchaser, he shall, at some time after the service of the notice, cause a public local inquiry to be held by a competent officer into the objections made by any persons whose land is required to be taken, and by other persons, if any, interested in the subject-matter of the inquiry.

(7.) Where the purchaser is a volunteer corps or the Sect. 1.
council of a county or borough—

(a.) The corps or council may, if they think fit, on compliance with the provisions of this section with respect to notices, present a petition to a Secretary of State. The petition shall state the land intended to be taken, and the purposes for which the land is required, and the names of the owners, lessees, and occupiers of land who have assented, dissented, or are neuter in respect of the taking the land, or who have returned no answer to the notice. The petition shall pray that the corps or council may, with reference to the land, be allowed to put in force the powers of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement, and the prayer shall be supported by such evidence as the Secretary of State requires :

(b.) On receipt of the petition and on due proof of the proper notices having been served, the Secretary of State shall take the petition into consideration, and may either dismiss the same, or direct a public local inquiry to be held by a competent officer as to the propriety of assenting to the prayer of the petition.

(8.) Before a local inquiry is held in pursuance of this section the Secretary of State shall publish a notice of the intention to hold the inquiry—

(a.) By affixing copies conspicuously on or in the immediate neighbourhood of the land proposed to be acquired ; and

(b.) By advertising the notice once at least in

Sect. 2.

each of two successive weeks in some one and the same local newspaper circulating in the neighbourhood.

(9.) If after the local inquiry has been held the Secretary of State is satisfied that the land ought to be taken, he may make a provisional order to the effect, authorising the taking of the land either by himself or by a volunteer corps or by a council of a county or borough, as the case may be, and may submit a Bill to Parliament for the confirmation of the provisional order, but the provisional order shall not be of any effect unless and until it is confirmed by Parliament.

(10.) If, while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against anything comprised therein, the Bill, so far as relates to the order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills.

(a) *Ante*, p. 31. These sections deal with subscription of capital in the case of public companies.

(b) Sections 150, 151, *ante*, p. 298.

(c) *Ante*, p. 222.

Power to
let land.

3. Land acquired under this Act may be let by a volunteer corps, or if acquired by the council of a county or borough by that council, in any manner consistent with the use thereof for military purposes.

4—7.

Sections 4—7 contain provisions as to obtaining money for the purposes of acquiring land.

Provision
as to dis-
bandment
of corps,
&c.

8. (1.) If a volunteer corps holding land under this Act is disbanded, the land shall, by virtue and subject to the provisions of this section, vest in the Secretary of State from the date of the disbandment, subject to the repayment of any

money borrowed for the purchase of the land, and not already repaid, and the sums required for such repayment shall, if and so far as not provided by the sale of the land, be paid out of moneys provided by Parliament for Army services. Sect. 8.

(2.) A certificate of the Secretary of State that land has vested in him under this section shall be conclusive evidence of the fact certified.

(3.) If the volunteer corps on whose behalf land is acquired under this Act by a county or borough council is disbanded, the council may either appropriate the land to any purpose approved by the Local Government Board, or sell it for the best price that can be reasonably obtained, and any money arising from the sale shall be applied towards repaying any money borrowed for the purchase of the land, and so far as not required for that purpose shall be applied to any purpose to which capital moneys are properly applicable and which is approved by the Local Government Board.

Provided that before so appropriating any such land or before selling any such land, if it is not so appropriated, the council shall offer to sell the same to the person then entitled to the land (if any) from which the same was originally severed, and thereupon sections one hundred and twenty-nine to one hundred and thirty-two, both inclusive, of the Lands Clauses Consolidation Act, 1845, shall apply as if the land were superfluous land and the council were the promoters of the undertaking within the meaning of those sections. 8 & 9 Vict. c. 18.

(a) For these sections, see *ante*, pp. 284—286.

9. (1.) Rules under section twenty-four of the Volunteer Act, 1863, may provide for the exercise of any powers and the performance of any duty under this Act by any officer of the volunteer corps on behalf of the corps, and may provide generally for the carrying into effect of this Act by a volunteer corps. Rules as to exercise of powers, &c., by volunteer corps. 26 & 27 Vict. c. 65.

(2.) The powers given by section twenty-five of the Volunteer Act, 1863, to the commanding officer for the time

Sect. 9. being of a volunteer corps and his successors shall include a power to mortgage any land acquired under this Act and to do all things necessary for that purpose.

10, 11. . . .

Sections 10 and 11 enable Crown lands and lands held for ecclesiastical or public purposes to be leased to the Secretary of State, or to a volunteer corps for military purposes. By section 24, the Secretary of State cannot acquire any lease or license over land in the New Forest, except by provisional order.

Proof that land has ceased to be used for military purposes.

12. Any land leased under this Act shall be deemed to have ceased to be used for military purposes where there has not been such use for a period of one year, and a certificate of the fact of such non-user is given by a Secretary of State ; and the certificate shall be conclusive evidence of the fact of such non-user.

Power to stop or divert footpaths.

13. (1.) Where a footpath crosses or runs inconveniently or dangerously near to any land leased under this Act, that footpath may, with the consent of the vestry of the parish in which the same is situate, and on the certificate of two justices that the footpath to be substituted is convenient for the public, be stopped up or diverted.

. 5 & 6 Will. 4, c. 50.

(2.) The provisions of the Highway Act, 1835, as to the obtaining of a certificate and the stopping up or diverting a highway where a person other than the inhabitants or vestry are desirous of stopping up, diverting, or turning a highway shall apply so far as practicable to the obtaining of a certificate, and the stopping up or diverting a footpath under this section ; with this exception, that the certificate of the justices shall be conclusive in cases where it states the fact of their having viewed the footpath to be stopped up or diverted, and that the proposed new footpath is convenient for the public.

Part 2 deals with the making of bye-laws for securing public safety, but by section 15, it is provided that such bye-laws shall not injuriously

affect the private rights of any person further or otherwise than is authorised by the grant of the right to use the land. **Sect. 13.**

Section 3 of the Artillery and Rifle Ranges Act, 1885, which section is not repealed, enables the Secretary of State to make bye-laws as to the seashore by which the rights of persons may be invaded, compensation being made:—

THE ARTILLERY AND RIFLE RANGES ACT, 1886.

3. (1.) Where any land, the use of which can be regulated by bye-laws under this Act, abuts on any sea or tidal water, this Act shall extend to such sea and tidal water, and the shore thereof as if it were part of such land, and bye-laws in relation thereto may be made accordingly: Provided that—

(a.) If any bye-law injuriously affects or obstructs the exercise of any private right of any person or body corporate in or over such sea, tidal water, or shore, such person shall be entitled to compensation, and such compensation in case of difference shall be ascertained in manner provided by the Lands Clauses Acts with respect to the compensation for land taken otherwise than by agreement; and

(b.) Any such bye-law shall not injuriously affect any public right within the meaning of this section, unless made with the consent of the Board of Trade; but the Board of Trade, if satisfied after such inquiries and such notice and opportunity for objection as hereinafter mentioned, that a restriction of any public right is required for the safety of the public, or for the exigencies of the military purpose to which the land abutting on such sea or tidal water is appropriated, may consent to a bye-law restricting the said public right to such extent as under all the circumstances of the case seems reasonable.

(2.) The Board of Trade, before consenting to any bye-law under this section, shall cause notice of such bye-law to be given by advertisement or otherwise in the locality, in order that such town, harbour, and other local authorities, and persons as are interested may have an opportunity for making objections to the bye-law, and shall consider any objections made, and shall make such inquiries as appear to the Board necessary for the purposes of ascertaining that the bye-law will not unreasonably interfere with any public right.

(3.) For the purpose of this section, "public right" means any right of navigation, anchoring, grounding, fishing, bathing, walking, or recreation.

The Court will grant an injunction to restrain the use of a rifle range by a volunteer corps until it is rendered free from danger to the tenant of neighbouring land. *Bannister v. Bigge*, 34 Beav. 287.

In an action for an injunction to restrain the commanding officer at Aldershot from using, in such a way as to cause annoyance, a rifle range on Ash Common, which had been acquired by the Crown for military purposes and was vested in the Secretary of State for War, it was held that the Secretary of State for War was a necessary party, and that an action will lie against him for misuser of land vested in him, but an action

Sect. 13. will not lie against him for the reasonable use of land for military purposes under his direction, even although that use would otherwise have been a nuisance. *Hawley v. Steele*, 6 Ch. D. 521. According to the principle laid down in *Hammersmith Railway Company v. Brand*, L. R. 4 H. L. 171, the plaintiff in the above case would not be entitled to compensation for such annoyance.

* * * * *

PART III.

Supplemental.

Applica-
tion of
Act to
yeomanry
corps.

19. This Act shall apply in the case of a yeomanry corps as if it were a volunteer corps; and all land acquired by a yeomanry corps shall vest in the commanding officer of the corps for the time being and his successors in office with power for him to sue and make contracts and conveyances and to do all other lawful acts relating thereto.

Power to
have com-
pensation
settled by
arbitra-
tion.

20. Where any land is acquired under this Act or for military purposes under any Act with which the Lands Clauses Acts are incorporated, the person or authority acquiring the land may require that the compensation to be paid for the land be settled by arbitration and not by reference to a jury, and thereupon the provisions of the Lands Clauses Acts with reference to arbitration shall, if not already applicable, apply for the purpose of settling the compensation.

Power to
enter on
land to fix
alignment
marks.

21. Where the Secretary of State certifies that it is necessary for the purposes of coast defence operations that alignment marks should be provided in any places upon the coast, the following provisions shall apply for that purpose:—

- (a.) Any person authorised by the Secretary of State may, after seven days' notice to the owner of the land, enter upon any land for the purpose of erecting, repairing, or replacing such alignment marks, and may do all things necessary for any such purpose, but shall do as little damage to the land as possible.

(b.) Full compensation shall be paid to the owner of the land for any damage caused in or by the erection, repair, or replacement of such alignment marks, and in case of dispute the amount of compensation shall be determined by arbitration under the Arbitration Act, 1889. Sect. 21.
52 & 53
Vict. c. 49.

(c.) If any person refuses to permit any authorised person to enter upon any land for the purpose of this section, or obstructs the erection, repair, or replacing of any such alignment marks, or destroys, displaces, damages, or obstructs, any such alignment marks, he shall be liable on summary conviction to a fine not exceeding five pounds.

(a) *Ante*, p. 677.

22. All powers given by this Act shall be in addition to any other power to acquire land for military purposes conferred by any Act passed before this Act, and nothing contained in this Act shall prejudicially affect the powers vested in the Secretary of State for War under the Defence Acts and the Acts incorporated therewith. Saving for acquisition of land under other Acts.

The principal Acts dealing with the acquisition of land for military purposes besides this Act is the Defence Act, 1842, and the various Acts amending it, for which see Appendix. Power has also been given to purchase land for specific purposes; see, for example, the Military Forces Localisation Act, 1872 (35 & 36 Vict. c. 68), where money was voted for the purpose of building barracks, and power given to take land.

By the Military Tramways Act, 1887 (50 & 51 Vict. c. 65), power may be given by provisional order of the Board of Trade to be confirmed by Parliament to take land for the purpose of tramways.

23. In this Act the expression "military purposes" includes rifle or artillery practice, the building and enlarging of barracks and camps, the erection of butts, targets, batteries, and other accommodation, the storing of arms, military drill, and any other purpose connected with military matters approved by the Secretary of State. Interpretation.

THE TELEGRAPH ACT, 1892.

55 & 56 VICT. CAP. 59.

An Act to make further provision respecting Telegraphs.

[28th June, 1892.]

No power was given by any of the previous telegraph Acts, enabling telegraph works to be placed on or over private land without the consent of the owner or occupier. Power is now given by this Act to the Postmaster-General to obtain a provisional order to enable him to construct and maintain such works on private land.

* * * *

Sect. 2.
Power of
Railway
and Canal
Commis-
sion to
make pro-
visional
order for
construc-
tion of
work on
private
land.

2. (1.) If the Postmaster-General considers that the inhabitants of any district or any public authority are debarred from the public convenience of telegraphic communication owing to the refusal or failure of any person being the occupier, lessee, or owner of any land or building to consent to the construction or maintenance of a work by the Postmaster-General, he may, without prejudice to any other power of proceeding under the Telegraph Acts, 1863 and 1878, or this Act, apply to the Railway and Canal Commission, and that Commission, if satisfied, after holding a local inquiry and giving an opportunity for all persons interested to be heard, that the inhabitants or authority are so debarred as aforesaid, may make an order consenting to the construction or maintenance of the work either unconditionally or subject to such pecuniary or other terms, conditions and stipulations as the Commission think just, and such consent shall have effect as a consent given by the said person to the construction or maintenance of such work, but subject as aforesaid all the provisions of the Telegraph Act, 1863, shall apply to such work, and such person shall have and enjoy all the protection and benefit of such provisions.

26 & 27
Vict.
c. 112.

(2.) If the said person presents to the Commission, within one month after the service of such Order on him, a petition

praying that the Order shall be laid before Parliament, and Sect. 2.
 does not withdraw that petition, such Order shall have no effect until confirmed by Parliament with such modifications (if any) as Parliament may approve or direct; but if such petition is not presented, or though presented is withdrawn, the Railway and Canal Commission shall certify the fact, and after the date of that certificate such Order shall have full effect.

(3.) The Postmaster-General may cause to be introduced into Parliament a public Bill confirming any such Order, and the Order when so confirmed, with any modification made therein by Parliament, shall have full effect.

(4.) If while a Bill confirming an Order under this section is pending in either House of Parliament a petition is presented against the Order, the Bill, so far as it relates to that Order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a private Bill.

(5.) The Railway and Canal Commission may hold a local inquiry for the purposes of this Act by any one or two of their members, or by any officer of the Commission whom they may direct to hold the same, and Parts One and Four of the Railway and Canal Traffic Act, 1888, except the 51 & 52
 sections relating to appeal, shall apply as if herein re-enacted Vict. c. 25.
 and in terms made applicable to the purposes of this section, and any officer appointed to hold the inquiry shall have power to administer an oath.

(6.) The Railway and Canal Commission may make an interlocutory order for the continuance of an existing work while proceedings under this section are pending.

This section does not apply to the undertakings of railway and canal companies authorised by Act of Parliament. Section 7.

The Telegraph Act, 1863, mentioned in the above section, is a general Act regulating the construction of telegraphic works. Section 6 of that Act allowed telegraph companies, which since the Telegraph Acts of 1868 and 1869, include the Postmaster-General, to place and maintain telegraphs over or under streets and public roads and lands, buildings, railways, canals, branches of the sea, and shore or beds of tidal rivers,

Sect. 2. subject to various restrictions, which were to some extent modified by the Telegraph Act, 1878 (41 & 42 Vict. c. 76). In respect of Crown lands and private lands these works could only be done by consent. The principal provisions as to compensation are contained in sections 7 and 21.

THE TELEGRAPH ACT, 1864.

Provision as to compensation. 7. In the exercise of the powers given by the last foregoing section the company shall do as little damage as may be, and shall make full compensation to all bodies and persons interested for all damage sustained by them by reason or in consequence of the exercise of such powers, the amount and application of such compensation to be determined in manner provided by the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation (Scotland) Act, 1845, respectively, and any Act amending those Acts, for the determination of the amount and application of compensation for lands taken or injuriously affected.

Restrictions as to works affecting private or Crown property.

As to works affecting Crown property. 21. The company shall not place any work by the side of any land or building, so as to stop, hinder, or interfere with ingress or egress for any purpose to or from the same, or place any work under, in, upon, over, along, or across any land or building, except with the previous consent in every case of the owner, lessee, and occupier of such land or building, which consent, in case of any land or building belonging to or enjoyed by the Queen's most Excellent Majesty in right of Her Crown, may be given by the Commissioners for the time being of Her Majesty's Woods, Forests, and Land Revenues, or one of them, on behalf of Her Majesty: Provided always, that with respect to lands and buildings situate within the limits of the district over which the authority of the Metropolitan Board of Works extends (hereinafter referred to as the Metropolis), or within the limits of any city or municipal borough or town corporate, or any town having a population of thirty thousand inhabitants or upwards, according to the latest census (hereinafter referred to as a city or large town), if the body having the control of any street in the Metropolis or a city or large town, consents to the placing of works of the company in, upon, over, along, or across that street, then and in every such case that consent shall (unless it is otherwise provided by the terms thereof), be sufficient authority for the company, without any further consent, except as to any land or building belonging to or enjoyed by Her Majesty in right of Her Crown, to place and maintain a telegraph over, along, or across any building adjoining to or near the street, and situate within the limits of the district over which the powers of the consenting body extend, or over, along, or across any land, not being laid out as building land, or not being a garden or pleasure ground, adjoining to or near the street and situate within the same limits, subject nevertheless to the following provisions:—

- (1.) Twenty-one days at least before the company proceeds to place a telegraph by virtue of the authority so conferred, they shall publish a notice stating they have obtained the

consent of such body as aforesaid, and describing the intended course of such telegraph : **Sect. 2.**

- (2.) Where the company by virtue of the authority so conferred places a telegraph directly over any dwelling-house, they shall not place it at a less height above the roof thereof than six feet, if the owner, lessee, or occupier thereof objects to their placing it at a less height :
- (3.) If at any time the owner, lessee, or occupier of any building or land adjoining to a building, directly over which building or land the company by virtue of the authority so conferred places a telegraph, desires to raise the building to a greater height, or to extend it over such land, the company shall increase the height or otherwise alter the position of the telegraph, so that the same may not interfere with the raising or extension of the building, within fourteen days after receiving from the owner, lessee, or occupier a notice of his intention to raise or extend the building, or in case of difference between the company and the owner, lessee, or occupier as to his intention, then within fourteen days after receiving a certificate, signed by a justice of the peace, certifying that he is satisfied of the intention of the owner, lessee, or occupier to raise or extend the building :
- (4.) The company shall make full compensation to the owner, lessee, and occupier of any land or building over, along, or across which the company by virtue of the authority so conferred places a telegraph, and which may be shown to be in any respect prejudicially affected thereby, the amount of such compensation to be determined in manner provided by the said Lands Clauses Consolidation Acts respectively, and any Act amending those Acts, for the determination of the amount of compensation with respect to lands injuriously affected :

Provided also, that the consent of any person occupying as a tenant from year to year only shall not be required, nor shall any person so occupying be entitled to such compensation as aforesaid.

THE ISOLATION HOSPITALS ACT, 1893.

56 & 57 VICT. CAP. 68.

An Act for enabling County Councils to promote the establishment of Hospitals for the reception of Patients suffering from Infectious Diseases. [21st December, 1893.]

This Act enables county councils in certain districts, upon representations being made as to the necessity for an isolation hospital in any part of the district, to hold an inquiry, and if satisfied of the necessity for such hospital, to constitute a hospital district and appoint a hospital committee. The hospital committee may consist of members of the council and of representatives of the area or wholly of either. This committee shall be a body corporate with a common seal, and capable of acquiring land by devise, gift, purchase or otherwise without license in mortmain. They have powers of acquiring land as herein mentioned.

The Act does not extend to Scotland and Ireland or to the administrative county of London, or to any county borough, or to any borough of a population of 10,000 or upwards without the consent of the council of the borough. As to boroughs below 10,000 population it is not to apply without the like consent unless the Local Government Board by order direct that it shall apply.

* * * * *

Sect. 11. **11.** Subject to any directions given by the county council, a hospital committee may purchase or lease any land, whether within or without the hospital district, for the purpose of erection thereon, an isolation hospital, and may exercise all the powers conferred on a sanitary authority by the provisions of the Public Health Act, 1875, and the Acts amending the same, relating to the purchase of lands. For the purposes of this section the provisions contained in sections one hundred and seventy-five to one hundred and seventy-eight (inclusive), and sections two hundred and ninety-six to

Purchase
of land for
hospital.

88 & 89
Vict. c. 35.

two hundred and ninety-eight (inclusive), of the Public Health Act, 1875, shall, so far as consistent herewith, be incorporated with this Act. Sect. 11.

Sections 175—178 of the Public Health Act, 1875, will be found, *ante*, pp. 509—514. They contain provisions for acquiring land. The Lands Clauses Act are incorporated with certain exceptions, but before the compulsory clauses can be put into operation it is necessary to obtain a provisional order. The provisions as to obtaining provisional orders are contained in section 176, and sections 296—298 contain further provisions as to the granting of such orders by the Local Government Board.

THE LOCAL GOVERNMENT ACT, 1894.

56 & 57 VICT. CAP. 73.

*An Act to make further provision for Local Government in
England and Wales.* [5th March, 1894.]

This Act provides for the creation of parish councils, and urban and rural district councils. In urban districts the urban sanitary authority becomes the urban district council, and a rural district council is formed for each rural sanitary district. It is provided that there shall be a parish council for every rural parish with a population of 300 or upwards, and in parishes of a less population the county council may in certain cases by order provide such council.

* * * * *

Sect. 3. **3. (9.)** Every parish council shall be a body corporate by the name of the parish council, with the addition of the name of the parish, or if there is any doubt as to the latter name, of such name as the county council after consultation with the parish meeting of the parish direct, and shall have perpetual succession, and may hold land for the purposes of their powers and duties without license in mortmain; and any act of the council may be signified by an instrument executed at a meeting of the council, and under the hands or, if an instrument under seal is required, under the hands and seals, of the chairman presiding at the meeting and two other members of the council.

* * * * *

Powers for
acquisition
of land.

9. (1.) For the purpose of the acquisition of land by a parish council the Lands Clauses Acts shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight of the Public Health Act, 1875, (a) shall apply as if the parish council were referred to therein.

38 & 39
Vict. c. 55.

(2.) If a parish council are unable to acquire by agreement and on reasonable terms suitable land for any purpose

for which they are authorised to acquire it, they may represent the case to the county council, and the county council shall inquire into the representation. **Sect. 9.**

(3.) If on any such representation, or on any proceeding under the Allotments Acts, 1887(*b*) and 1890, a county council are satisfied that suitable land for the said purpose of the parish council or for the purpose of allotments (as the case may be), cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to justify the county council in proceeding under this section, they shall cause such public inquiry to be made in the parish, and such notice to be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken as may be prescribed, and all persons interested shall be permitted to attend at the inquiry, and to support or oppose the taking of the land. <sup>50 & 51
Vict. c. 48.
53 & 54
Vict. c. 65.</sup>

(4.) After the completion of the inquiry, and considering all objections made by any persons interested, the county council may make an order for putting in force, as respects the said land or any part thereof, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(5.) If the county council refuse to make any such order, the parish council, or, if the proceeding is taken on the petition of the district council, then the district council, may petition the Local Government Board, and that Board after local inquiry may, if they think proper, make the order, and this section shall apply as if the order had been made by the county council. Any order made under this sub-section overruling the decision of the county council shall be laid before Parliament by the Local Government Board.

(6.) A copy of any order made under this section shall be served in the prescribed manner, together with a statement that the order will become final and have the effect of an Act of Parliament, unless within the prescribed period a memorial by some person interested is presented to the Local Govern-

Sect. 9. ment Board praying that the order shall not become law without further inquiry.

(7.) The order shall be deposited with the Local Government Board, who shall inquire whether the provisions of this section and the prescribed regulations have been in all respects complied with ; and if the Board are satisfied that this has been done, then, after the prescribed period—

(a.) If no memorial has been presented, or if every such memorial has been withdrawn, the Board shall, without further inquiry, confirm the order :

(b.) If a memorial has been presented, the Local Government Board shall proceed to hold a local inquiry, and shall, after such inquiry, either confirm, with or without amendment, or disallow the order :

(c.) Upon any such confirmation the order, and if amended as so amended, shall become final and have the effect of an Act of Parliament, and the confirmation by the Local Government Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made, and is within the powers of this Act.

(8.) Sections two hundred and ninety-three to two hundred and ninety-six, and sub-sections (1) and (2) of section two hundred and ninety-seven of the Public Health Act, 1875, shall apply to a local inquiry held by the Local Government Board for the purposes of this section, as if those sections and sub-sections were herein re-enacted, and in terms made applicable to such inquiry.

(9.) The order shall be carried into effect, when made on the petition of a district council, by that council, and in any other case by the county council.

(10.) Any order made under this section for the purpose of the purchase of land otherwise than by agreement shall incorporate the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation

Act, 1845,(c) with the necessary adaptations, but any question of disputed compensation shall be dealt with in the manner provided by section three of the Allotments Act, 1887, and provisoes (a), (b), and (c) of sub-section (4) of that section(d) are incorporated with this section and shall apply accordingly: Provided that in determining the amount of disputed compensation, the arbitrator shall not make any additional allowance in respect of the purchase being compulsory.(e) Sect. 2.
8 & 9 Vict.
c. 20.

(11.) At an inquiry or arbitration held under this section the person or persons holding the inquiry or arbitration shall hear any authorities or parties interested by themselves or their agents, and shall hear witnesses, but shall not, except in such cases as may be prescribed, hear counsel or expert witnesses.

(12.) The person or persons holding a public inquiry for the purposes of this section on behalf of a county council shall have the same powers as an inspector or inspectors of the Local Government Board when holding a local inquiry; and section two hundred and ninety-four of the Public Health Act, 1875, shall apply to the costs of inquiries held by the county council for the purpose of this section as if the county council were substituted for the Local Government Board.

(13.) Sub-section (2) of section two, if the land is taken for allotments, and, whether it is or is not so taken, sub-sections (5), (6), (7), and (8) of section three of the Allotments Act, 1887,(f) and section eleven of that Act, and section three of the Allotments Act, 1890, are incorporated with this section, and shall, with the prescribed adaptations, apply accordingly. 50 & 51
Vict. c. 48.
53 & 54
Vict. c. 65.

(14.) Where the land is acquired otherwise than for allotments, it shall be assured to the parish council; and any land purchased by a county council for allotments under the Allotments Acts, 1887 and 1890, and this Act, or any of them, shall be assured to the parish council, and in that case

Sect. 9. sections five to eight of the Allotments Act, 1887, shall apply as if the parish council were the sanitary authority.

(15.) Nothing in this section shall authorise the parish council to acquire otherwise than by agreement any land for the purpose of any supply of water, or of any right of way.

(16.) In this section the expression "allotments" includes common pasture where authorised to be acquired under the Allotments Act, 1887.

(17.) Where, under the Allotments Act, 1890, the Allotments Act, 1887, applies to the purchase of land by the county council, that Act shall apply as amended by this section, and the parish council shall have the like power of petitioning the county council as is given to six parliamentary electors by section two of the Allotments Act, 1890.

(18.) This section shall apply to a county borough with the necessary modifications, and in particular with the modification that the order shall be both made and confirmed by the Local Government Board and shall be carried into effect by the council of the county borough.

(19.) The expenses of a county council incurred under this section shall be defrayed in like manner as in the case of a local inquiry by a county council under this Act.

(a) Section 178 (*ante*, p. 514) deals with lands belonging to the Duchy of Lancaster.

(b) *Ante*, p. 560.

(c) Sections 77—85 of the Railways Clauses Act, 1845, are the sections relating to mines, *ante*, pp. 358—370.

(d) As to an allowance for compulsory purchase, see note to section 21 of the Housing of the Working Classes Act, 1890, *ante*, p. 611.

"Suitable Land for any Purpose."—Some of the purposes for which they may acquire land are for buildings and offices, for a recreation ground, and for public walks. They may also make a representation under the Allotments Acts and under the Housing of the Working Classes Act, 1890. Parish councils have also power to adopt the Lighting and Watching Act, 1833; the Baths and Washhouses Act, 1846—1882; the Burial Acts, 1852—1885; the Public Improvement Act, 1860; and the Public Libraries Act, 1892. Under these Acts compulsory powers of taking land are not conferred, but apparently land may be acquired compulsorily under this section for the purposes of these Acts.

10. (1.) The parish council shall have power to hire land **Sect. 10.**
 for allotments, and if they are satisfied that allotments are **Hiring of**
 required, and are unable to hire by agreement on reasonable **land for**
 terms suitable land for allotments, they shall represent the **allotments.**
 case to the county council, and the county council may make
 an order authorising the parish council to hire compulsorily
 for allotments, for a period not less than fourteen years nor
 more than thirty-five years, such land in or near the parish
 as is specified in the order, and the order shall, as respects
 confirmation and otherwise, be subject to the like provisions
 as if it were an order of the county council made under the
 last preceding section of this Act, and that section shall apply
 as if it were herein re-enacted with the substitution of
 "hiring" for "purchase" and with the other necessary
 modifications.

(2.) A single arbitrator, who shall be appointed in
 accordance with the provisions of section three of the
 Allotments Act, 1887, and to whom the provisions of that
 section shall apply, shall have power to determine any
 question—

- (a.)** As to the terms and conditions of the hiring ; or
- (b.)** As to the amount of compensation for severance ; or
- (c.)** As to the compensation to any tenant upon the deter-
 mination of his tenancy ; or
- (d.)** As to the apportionment of the rent between the land
 taken by the parish council and the land not taken
 from the tenant ; or
- (e.)** As to any other matter incidental to the hiring of the
 land by the council, or the surrender thereof at the
 end of their tenancy ;

but the arbitrator in fixing the rent shall not make any
 addition in respect of compulsory hiring.

(3.) The arbitrator, in fixing rent or other compensation,
 shall take into consideration all the circumstances connected
 with the land, and the use to which it might otherwise be put

Sect. 10. by the owner during the term of hiring, and any depreciation of the value to the tenant of the residue of his holding caused by the withdrawal from the holding of the land hired by the parish council.

(4.) Any compensation awarded to a tenant in respect of any depreciation of the value to him of the residue of his holding caused by the withdrawal from the holding of the land hired by the parish council shall, as far as possible, be provided for by taking such compensation into account in fixing, as the case may require, the rent to be paid by the parish council for the land hired by them, and the apportioned rent, if any, to be paid by the tenant for that portion of the holding which is not hired by the parish council.

(5.) The award of the arbitrator or a copy thereof, together with a report signed by him as to the condition of the land taken by the parish council, shall be deposited and preserved with the public books, writings, and papers of the parish, and the owner for the time being of the land shall at all reasonable times be at liberty to inspect the same and to take copies thereof.

(6.) Save as hereinafter mentioned, sections five to eight of the Allotments Act, 1887, shall apply to any allotment hired by a parish council in like manner as if that council were the sanitary authority and also the allotment managers :

Provided that the parish council—

- (a.) May let to one person an allotment or allotments exceeding one acre, but if the land is hired compulsorily, not exceeding in the whole four acres of pasture or one acre of arable and three acres of pasture ; and
- (b.) May permit to be erected on the allotment any stable, cowhouse, or barn ; and
- (c.) Shall not break up, or permit to be broken up, any permanent pasture, without the assent in writing of the landlord.

(7.) On the determination of any tenancy created by compulsory hiring a single arbitrator who shall be appointed in accordance with the provisions of section three of the Allotments Act, 1887, shall have power to determine as to the amount due by the landlord for compensation for improvements, or by the parish council for depreciation, but such compensation shall be assessed in accordance with the provisions of the Agricultural Holdings (England) Act, 1883. Sect. 10.
46 & 47
Vict. c. 11.

(8.) The order for compulsory hiring may apply, with the prescribed adaptations, such of the provisions of the Lands Clauses Acts (including those relating to the acquisition of land otherwise than by agreement) as appear to the county council or Local Government Board sufficient for carrying into effect the order, and for the protection of the persons interested in the land and of the parish council.

(9.) Nothing in this section shall authorise the compulsory hiring of any mines or minerals, or confer any right to take, sell, or carry away any gravel, sand, or clay, or authorise the hiring of any land which is already owned or occupied as a small holding within the meaning of the Small Holdings Act, 1892. 55 & 56
Vict. c. 31.

(10.) If the land hired under this section shall at any time during the tenancy thereof by the parish council be shown to the satisfaction of the county council to be required by the landlord for the purpose of working and getting the mines, minerals, or surface minerals thereunder, or for any road or work to be used in connection with such working or getting, it shall be lawful for the landlord of such land to resume possession thereof upon giving to the parish council twelve calendar months previous notice in writing of his intention so to do, and upon such resumption the landlord shall pay to the parish council and to the allotment holders of the land for the time being such sum by way of compensation for the loss of such land for the purposes of allotments as may be agreed upon by the landlord and the parish council, or in default of such agreement, as may be awarded by a

Sect. 10. single arbitrator to be appointed in accordance with the provisions of section three of the Allotments Act, 1887, and the provisions of that section shall apply to such arbitrator,

The word " landlord " in this sub-section means the person for the time being entitled to receive the rent of the land hired by the parish council.

(11.) The Local Government Board shall annually lay before Parliament a report of any proceedings under this and the preceding section.

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THE DISEASES OF ANIMALS ACT, 1894.

57 & 58 VICT. CAP. 57.

An Act to consolidate the Contagious Diseases (Animals) Act, 1878 to 1893. [25th August, 1894.]

This Act consolidates the provisions for enabling local authorities to prevent the spread of contagious diseases among cattle, sheep, goats, and swine.

* * * * *

3. The local authorities in England and Wales shall be— Sect. 3.

(1.) For each borough not being a borough to which Local authorities in England and Wales. 51 & 52 section 39 of the Local Government Act, 1888, applies, the borough council ;

(2.) For the residue of each administrative county, the Vict. c. 41. county council.

Provided that the mayor and commonalty and citizens of the City of London, acting by the mayor, aldermen, and commons of that city in common council assembled, shall be the local authority for the City of London, and shall be the local authority in and for the county of London for the purposes of the provisions of this Act relating to foreign animals.

* * * * *

32. (1.) A local authority may provide, erect, and fit up wharves, stations, lairs, sheds and other places for the landing, reception, keeping, sale, slaughter, or disposal of foreign or other animals, carcasses, fodder, litter, dung and other things. Provision of wharves, stations, lairs, &c.

(2.) There shall be incorporated with this Act, the Markets and Fairs Clauses Act, 1844, (a) except sections 6 to 9 and 51 to 60 thereof. 10 & 11 Vict. c. 14.

(3.) A wharf or other place provided by a local authority

Sect. 32. shall be a market within that Act ; and this Act shall be the special Act. . . .

(a) See *ante*, p. .

Power for
local
authority
to acquire
land.

33. (1.) A local authority may purchase, or may by agreement take on lease or at a rent, land for wharves or other places, or for use for burial of carcases, in cases where there is not any ground suitable in that behalf in possession or occupation of the owner of the animal, or any common or uninclosed land suitable and approved by the Board of Agriculture in that behalf, or for any other purpose of this Act.

(2.) The local authority may (subject to any agreement) dispose of land so acquired, but not required for the purposes of this Act, carrying the money produced thereby to the credit of the local rate.

(3.) The regulations contained in section one hundred and seventy-six of the Public Health Act, 1875, shall be observed with respect to the purchase of land by a local authority for the purposes of this Act, as if the local authority were a local board, and purposes of this Act were purposes of that Act : Provided that the requisite advertisements and notices may be published and served in any two consecutive months, and that the local rate shall be substituted for the rates therein mentioned.

(4.) The powers conferred by this section may be exercised by a local authority with respect to land within or without their district.

Section 176 of the Public Health Act, 1875, referred to in sub-section (3) incorporates the Lands Clauses Acts, and contains provisions for obtaining provisional orders when it is desired to purchase land compulsorily. See that section, *ante*, p. 511.

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THE MERCHANT SHIPPING ACT, 1894.

57 & 58 VICT. CAP. 60.

An Act to consolidate Enactments relating to Merchant Shipping. [25th August, 1894.]

* * * * *

639. (1.) A general lighthouse authority may take and purchase any land which may be necessary for the exercise of their lighthouse powers, or for the maintenance of their works, or for the residence of the light keepers, and for that purpose the Lands Clauses Acts shall be incorporated with this Act, and shall apply to all lighthouses to be constructed and all land to be purchased under the powers thereof. Sect. 639.
Powers as to land.

(2.) A general lighthouse authority may sell any land belonging to them.

Part XI. of this Act deals with lighthouses. The general lighthouse authority in England and Wales and the Channel Islands and adjacent seas and islands is the Trinity House. The general lighthouse authority has power to erect or place any lighthouse with all requisite works, roads, and appurtenances; to add to, alter, or remove any lighthouse; to erect or place any buoy or beacon; or alter or remove them; and to vary the character of any lighthouse. Section 638.

The Trinity House was incorporated by a charter of Hen. 8; it is not a department of the State. *Gilbert v. Trinity House Corporation*, 17 Q. B. D. 795.

* * * * *

**THE LANDS CLAUSES (TAXATION OF COSTS)
ACT, 1895.**

58 & 59 VICT. CAP. 11.

*An Act to amend the Law relating to the Taxation of Costs
under the Lands Clauses Acts.* [14th May, 1895.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Sect. 1. **1.** (1.) Where under the Lands Clauses Consolidation Act, 1845, or any Act incorporating the same, any question of disputed compensation is determined by the verdict of a jury, or by arbitration, the costs of and incidental to the inquiry or to the arbitration and award (as the case may be), shall, if either party so requires, be taxed and settled as between the parties by one of the masters of the Supreme Court, and such fees shall be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be taken in the offices of those masters ; and all those enactments (including the enactments relating to the taking of fees by means of stamps) shall extend to the fees in respect of such taxation.

31 & 32 **(2.)** Section forty-five of the Regulation of Railways Act,
Vict. 1868, and section one of the Lands Clauses Consolidation Act,
c. 119. 1869, are hereby repealed.
32 & 33
Vict. c. 18.

As to taxation of costs when the question is settled by a jury, see the Lands Clauses Act, 1845, s. 53, *ante*, p. 102 ; when settled by arbitration, see section 1 of the Lands Clauses Act, 1860, *ante*, p. 439, which is hereby repealed, but in effect re-enacted. The cases on taxation of costs will be found in the notes to that section.

Short title. **2.** This Act may be cited as the Lands Clauses (Taxation of Costs) Act, 1895.

A P P E N D I X .

BETTERMENT.

THAT persons whose property has been increased in value by an improvement effected by local authorities should specially contribute to the cost of the improvement has commended itself to many persons as a fair and reasonable principle. John Stuart Mill, in speaking of the "equality of taxation" (one of the fundamental principles of taxation enforced by Adam Smith), said: "There are cases in which exceptions may be made to it consistently with that equal justice which is the groundwork of the rule. Suppose that there is a kind of income which constantly tends to increase without any exertion or sacrifice on the part of the owners: the owners constitute a class in the community, whom the natural course of things progressively enriches, consistently with complete passiveness on their own part. In such a case it would be no violation of the principles on which private property is grounded if the State should appropriate the increase of wealth, or part of it as it arises. Now this," he adds, "is actually the case with rent. The ordinary progress of a society which increases in wealth is at all times tending to augment the incomes of landlords, to give them both a greater proportion of the wealth of the community independently of any trouble or outlay incurred by themselves." This "augmentation" he called the "unearned increment" and proposed to tax. "Betterment" as a principle is only a proposal to tax the increment when it clearly and directly arises from an improvement carried out by a public authority and at the public expense. The principle has been acted upon in America, and the London County Council sought to apply it to more than one of the improvement schemes which it proposed to carry out. Some of these applications, although they commended themselves to committees of the House of Commons, were rejected by committees of the House of Lords. The proposals were not the same in all respects as

Appndx.

Appendx. those which were embodied in two Improvement Bills passed in 1894, and although they did not pass into law they ultimately led the House of Lords to appoint a select committee to consider and report whether in the case of improvements sanctioned by Parliament and effected by the expenditure of public funds, persons, the value of whose property is clearly increased by an improvement, can be equitably required to contribute to the costs of the improvements, and, if so, in what cases and under what conditions Parliament should sanction the levying of such contributions in local Acts or provisional orders.

The committee took evidence, and ultimately reported as follows :—

TOWNS IMPROVEMENTS (BETTERMENT).

Report by the select committee appointed to consider and report whether, in the case of improvements sanctioned by Parliament and effected by the expenditure of public funds, persons, the value of whose property is clearly increased by an improvement, can be equitably required to contribute to the costs of the improvements, and, if so, in what cases and under what conditions Parliament should sanction the levying of such contributions in local Acts or provisional orders.

Ordered to report.

That the committee have met and considered the subject referred to them, and have agreed to the following report :—

1. The committee have taken evidence from the promoters of several Bills which have contained provisions for imposing what has been called a betterment charge in respect of improvements effected by local authorities.

2. They have also had before them witnesses who have had experience of the actual working of betterment charges in various forms, and they have taken the evidence of other experienced witnesses and of gentlemen who have written upon the subject.

3. They made known their willingness to hear any evidence that any municipal body or local authority might be disposed to lay before them. The committee, having fully considered

the evidence taken before them, have come to the following Appndx. conclusions, viz. :—

- (1.) The principle of betterment—in other words, the Principle.
principle that persons whose property has clearly been increased in market value by an improvement effected by local authorities should specially contribute to the cost of the improvement—is not in itself unjust, and such persons can equitably be required to do so. But the effect of a public work in raising the value of neighbouring lands is shown by experience to be uncertain. Whether, in any particular case, it is possible for a valuer to pronounce that such an effect has been produced by the completion of any public work, is a point upon which the evidence of eminent valuers differs greatly.
- (2.) The Standing Orders should be amended so that in Notice.
any case where a private Bill renders any property liable to a special charge on the ground that its market value will be increased by the completion of a public work, the owners of such property, or of any interest therein, shall be entitled to notice before the introduction of the Bill, in like manner as if the property were to be compulsorily purchased.
- (3.) It should be provided in the Bill that within some Notice of amount.
reasonable period after the completion of the work, the owner of the property intended to be charged should receive notice of the amount of the charge which the local authority proposes to make in respect of the alleged increase in the market value of the property due to the work in question. Inasmuch as the appropriateness of the period must to some extent depend upon the nature of the work and the condition of the neighbourhood, it would be difficult to fix any definite time applicable to all cases, but these considerations should be borne in mind by the committee to which the bill is referred. The period should not be so short that the effect of the improvement could not be adequately tested, and it should not be so long as to make the property intended to be charged suffer in its market value by the suspension of the decision as to the charge.
- (4.) In default of acquiescence by the person on whom Decided by arbitrator.
notice is served, the amount of the charge to be

APPENDIX.

made should be decided by an arbitrator, unless the said person claims to go before a jury, and the decision should be taken with as little delay as possible.

Costs.

- (5.) All the costs of such arbitration or inquiry before a jury should be borne by the local authority claiming to lay such charge, unless the arbitrator or jury shall find or award the same sum or a greater sum than that which the local authority sought to lay upon the property, in which case each party shall bear his own costs incident to the arbitration or inquiry, and the costs of the arbitrator or jury shall be borne by each of the parties in equal proportions; unless it should be otherwise ordered by the arbitrators, or in the case of a jury by the High Court, upon the ground that the opposition to the proposed charge has been frivolous and vexatious.

Worsement.

- (6.) If the owner has property in the immediate neighbourhood which is found to be injured in its market value by the same work, the amount of the injury should be considered in determining the charge to be imposed upon him for improvements.

Owner may claim to sell at unimproved value.

- (7.) If the owner is of opinion that the charge exceeds the enhancement of market value due to the public work, he should be entitled to claim that the local authority should purchase the property in question at the value which it bore, without regard to any improvement conferred or to be conferred upon it by such work; but under such circumstances a local authority purchasing a freehold or long leasehold should not be compellable to dispossess the occupying tenants, and should, if they prefer it, be empowered to purchase the reversion, subject to any intermediate interests.

- (8.) If any question should arise as to the incidence of the betterment charge between any of the persons entitled to different interests in the same property charged, the question should be determined by arbitration.

Bills.

- (9.) Various witnesses have illustrated their opinions by reference to the Bills now before Parliament, but the committee (to which these Bills have not been referred) has formed no opinion on the merits of

either of the Bills in question ; but inasmuch as the provision as to notices in paragraph (2) is inapplicable to the Bills already introduced, the committee consider that it ought to suffice if the select committee to which the Bills in question are to be referred should be satisfied that adequate notice has been given to all persons who may be affected by the proposed process of charging. Appndx.

- (10.) The committee have received evidence upon what has been called "recoupment," that is to say, powers given to a municipal or other public body to take land beyond what is necessary for the actual execution of the work, so that some part at least of the improved value may be secured by the improving public body in case of the burden upon the rate-payers. Some evidence was given by persons who had actual experience of the operation of such a system, the general effect of which was that it had not proved successful ; but the committee are not satisfied that it has ever been tried under circumstances calculated to make it successful, inasmuch as no sufficient power has ever yet been given to local authorities to become possessed of the improved properties without buying out all the trade interests, a course which is inevitably attended with wasteful and extravagant expenditure. Recoupment.

Before the committee issued their report, two Bills—the London County Council (Tower Bridge, Southern Approach) Bill and the Manchester Corporation Bill—which contained clauses giving effect to the principle of betterment, had passed the House of Commons. After the report of the Lords' Committee had been made public these Bills came before a committee of the House of Lords (presided over by Lord Cowper), and the clauses which had been introduced by the promoters with the object of giving effect to the recommendations of the committee on betterment were carefully considered. We have thought it well, as these clauses will probably be regarded in future as "model clauses," to give these in the form in which they left the committee of the House of Lords.

Clauses 6 and 22 (which follow) are taken from the Manchester Corporation Act, 1894, but the clauses in the

Appendix. London County Council (Tower Bridge, Southern Approach) Act, 1894, were, we believe, practically in the same form.

Power to
~~make~~
~~street~~
improve-
ments, &c.

6. Subject to the provisions of this Act the corporation may in the lines shown upon the deposited plans and according to the levels shown upon the deposited sections relating thereto respectively make and maintain the street improvements and other works hereinafter described and may in the lines shown on the deposited plans relating thereto make the new footpath in the township of Barton-upon-Irwell hereinafter described with all proper works and conveniences connected therewith respectively and may exercise the powers hereinafter mentioned (that is to say) :—

Firstly. They may widen on the east side thereof in the township and parish of Manchester in the county of Lancaster the street known as Half Street between Fennel Street and the street called Hanging Ditch so as to make the same of the width of ten yards ;

Secondly. They may widen on the east side thereof so much of Victoria Street in the township and parish aforesaid as lies between Cathedral Yard and Cateaton Street ;

Thirdly. They may make a new road in the township of Hulme in the parish of Manchester in the county of Lancaster in continuation of the proposed road or street leading from the north-west end of Hulme Hall Road across the Bridgewater Canal to and under the Manchester South Junction and Altrincham Railway such new road commencing at the westerly side of the said railway and terminating at the westerly side of the railway of the Cheshire Lines Committee, and for the purpose thereof may alter the viaduct upon which the last-mentioned railway is constructed ;

Fourthly. They may stop up and discontinue and extinguish all rights of way over so much of the public footpath in the township of Barton-upon-Irwell in the parish of Eccles in the county of Lancaster leading from Davyhulme to Barton which crosses the sewage outfall works of the corporation as lies between a point on such footpath four hundred and forty-seven yards or thereabouts northwards from its junction with Davyhulme Lane and the point where it joins Barton Road and in lieu thereof they may make a new footpath in the same township and parish between the points aforesaid.

22. And whereas the street improvements firstly and secondly described in and authorized by this Act including those referred to in or arising out of the scheduled agreements (in this section referred to as "the Improvement") will be effected out of public funds charged over the whole city and will or may substantially and permanently increase in value lands in the neighbourhood of the above-mentioned street improvements which will not be acquired for the purpose thereof and it is reasonable that provision should be made under which in respect or in consideration of such increased value a charge should be placed on such lands. Therefore the following provisions shall have effect provided that the same shall not be put into force unless the corporation by resolution of the council within two years after the passing of this Act determine so to do :—

- (1.) All lands within the limits marked on the deposited plans as "limits of deviation and of land to be acquired" in relation to the improvement but which shall not be purchased and taken by the corporation under the powers of this Act shall be liable to have an improvement charge placed on such lands or some of them (in accordance with the provisions hereinafter set forth) in respect or in consideration of any substantial and permanent increase in value which is clearly shown to be derived from the improvement;
- (2.) At least two months before the corporation commence any part of the improvement they shall give notice by registered letter addressed to each owner, lessee, or occupier of any such lands within the limits of deviation and of land to be acquired shown on the deposited plans as the corporation include in such specification; thereupon any such owner, lessee, or occupier may apply to the Local Government Board to appoint some independent person to make a valuation of the several lands within the limits of deviation and of land to be acquired which the corporation have included in the specification. A copy of the specification shall be delivered to the person so appointed within twenty-one days after his appointment and the person so appointed shall thereupon after giving such notice or notices as the Local Government Board may direct and hearing any parties interested and applying to be heard

Appendix.

proceed to make a valuation of all such lands which valuation is hereafter referred to as the "initial valuation." The proper cost of making the initial valuation including the reasonable costs, charges, and expenses of all or any of the parties interested (to be fixed in case of difference by the Local Government Board) shall be paid by the corporation;

Provided that if within one month after the service of the said notices no application be made for the appointment of a person to make the initial valuation, the corporation shall make such application and the valuation shall be made accordingly;

In making such valuation the valuer shall separately distinguish and assess in each case the value of the land apart from that of any existing buildings thereon and shall also value the land and buildings as a whole, and shall not take into consideration any increased value accruing or supposed to accrue to such land or buildings from or in consequence of the improvement but shall only take into consideration the value independently of the improvement and as if the improvement had not been contemplated;

The valuer shall also separately value the interest of the owner of any such lands and the interest of every lessee of any such lands for a term having not less than twenty-one years to run at the date of the valuation excluding from each such valuation any trade interest and shall not take into consideration any increased value accruing or supposed to accrue to such lands from or in consequence of the improvement but shall only take into consideration the value of the said lands independently of the improvement and as if the improvement had not been contemplated;

The initial valuation when made shall be deposited with the town clerk and shall be kept deposited at his office and shall be open to inspection at all reasonable times by any persons and their duly authorized agents interested in any lands comprised in the said valuation;

Assessment

(3.) The corporation shall not sooner than twelve months nor later than three years after the issue by them of

a certificate under seal of the completion of the improvement cause to be framed an assessment describing the lands situate within the said limits and comprised in the said valuation which the corporation allege ought to bear and pay the said improvement charge and the corporation shall in such assessment state and specify **Appendx.**

- (a.) The names of the owners lessees and occupiers of the lands described in the said assessment respectively so far as they can be ascertained ;
- (b.) The amounts by way of charge which the corporation allege ought to be charged upon such lands respectively ;

The assessment shall contain a statement of the amount which the corporation allege is the enhanced market value derived by the lands respectively from the improvement ;

The amount to be proposed in the assessment as the charge to be placed on any lands under the provisions of this section shall be equal to three per centum per annum upon one-half of the amount which the corporation allege is the enhanced market value derived by the said lands from the improvement after making all fair and proper deductions for rates taxes assessments and impositions on the said lands according to such increased value ;

- (4.) The assessment shall be submitted to and considered by the corporation at a meeting or meetings of the council and the corporation may by resolution approve the same either with or without modification or addition as they think fit ; **Approval of assessment by corporation.**
- (5.) The resolution approving an assessment shall be published once in each of two successive weeks in two or more Manchester daily newspapers with an interval of at least six clear days between the two publications and copies of such resolution shall be publicly posted on the site of the improvement to which it relates and within seven days of the date of the first publication of the resolution copies thereof shall also be served on the owners lessees and occupiers of the lands described in the assessment. Provided that in case the corporation are unable after diligent enquiry to ascertain the name **Notice of assessment.**

Appdx.

or address of any owner or lessee on whom a copy is to be served it shall be sufficient to serve a copy of the resolution either by delivering the same to the occupier of the lands with a notice that the same is to be given to each immediate or superior landlord or owner or by affixing a copy of the resolution to some conspicuous and convenient place on or near the lands ;

The notices served on the owners lessees and occupiers under this section shall state shortly the effect of the resolution and assessment upon the lands in respect of which they are served and also of the provisions of this section with respect to the time and mode of objecting to the assessment and the grounds on which the assessment may be objected to the right to have the matter decided by a jury and the payment of costs ;

Copies
to be de-
posited.

(6.) From and after the date of the first publication of the resolution and until the expiration of three months from the date of the last publication thereof the assessment or copies thereof certified by the town clerk or some other officer of the corporation shall be kept deposited at the town hall and shall be open to inspection at all reasonable times by any person interested ;

Objections
to assess-
ment.

(7.) During the said period of three months any owner or lessee of any lands described in the assessment or the occupier thereof for the time being may by written notice served on the corporation object to the assessment on any of the grounds following :—

- (i.) That any lands in which he is interested included in the assessment ought to be excluded by reason that it has not been or cannot be clearly shown that the market value of the lands to which the notice relates is substantially and permanently increased by the improvement ;
- (ii.) That the amount of any charge proposed to be placed upon any lands in which he is interested ought to be varied ;
- (iii.) That the assessment is incorrect in respect of some matter of fact to be specified in the objection ;

At any time during the said period of three months after the last publication of the assessment the owner or

Appndx.

lessee of any lands upon which a charge under this section is proposed to be placed who may be the owner or lessee of other property in the immediate neighbourhood of the improvement whether within or without the limits of deviation and of land to be acquired may give written notice to the corporation that substantial and permanent decrease in the value of such other property has been caused by the improvement, and that he claims that such decrease shall be considered by the arbitrator and if it be clearly shown that any substantial and permanent decrease in the value of such other property has been caused by the improvement, the arbitrator shall deduct the same before determining the amount of the charge in respect of such lands ;

For the purposes of this section joint tenants or tenants in common may give any such notice as aforesaid through one of their number authorised in writing under the hands of the majority of such joint tenants or tenants in common, and any lessees may combine in a notice ;

- (8.) If at the expiration of the said period of three months no notice of objection shall have been served on the corporation then the corporation may publish notice to that effect in the *London Gazette*, and as from the date of such notice such assessment shall become final ; If no objection assessment final.
- (9.) If any such notice of objection be served on the corporation within the said period of three months, then the corporation may apply to the Local Government Board to appoint an arbitrator for the purposes of this section and the Local Government Board shall appoint an arbitrator accordingly, and as often as any such arbitrator shall die or resign, or become incapable of acting (previous to the making of an award as hereinafter provided), the corporation may in like manner apply to the said board and the said board shall from time to time appoint another arbitrator in his stead, and every such arbitrator shall be entitled to such fees or remuneration as may be fixed by the Local Government Board ; Arbitrator to settle objections.

Provided that at the time of serving an objection to the amount of the charge imposed upon any lands the

Appendx.

owner, lessee, or occupier so objecting may give notice in writing to the corporation that he requires the same to be determined by a jury instead of an arbitrator, and thereupon the corporation shall forthwith issue their warrant to the sheriff or other proper person requiring him to summon a jury to determine the matter of such objection and to determine the amount to be charged upon the lands in pursuance of this section. Thereupon the matter of such objection shall (subject to the provisions as to costs hereinafter set forth) be determined in the same manner as a question of disputed compensation under the Lands Clauses Acts. The record of the verdict shall be delivered by the sheriff or other officer before whom such inquiry was held to the arbitrator who shall thereupon amend the assessment by inserting therein in respect of the lands to which the objection related the amount found by the verdict of the jury.

Amend-
ment of
assess-
ment.

- (10.) The corporation may any time before the appointment of the arbitrator but subject to the provisions of this section by resolution amend the assessment so as to include in the assessment as amended any lands by this Act made liable to have an improvement charge placed upon them and comprised in the initial valuation but not in the original assessment and may fix the sums proposed to be charged upon any such lands but any such resolution shall be published and copies thereof shall be served and copies of the amended assessment deposited for public inspection in the manner hereinbefore prescribed with respect to the original resolution and assessment, and objections may be made to the amended assessment in like manner and if made shall be dealt with and determined in like manner as objections to the original assessment ;

Procedure
of arbi-
trator.

- (11.) (i.) The corporation at any time after the appointment of the arbitrator may apply to the arbitrator to appoint a time for determining the matter of all objections made as in this section mentioned and for making an award, and shall publish a notice of the time and place appointed and copies of such notice shall be served upon the objectors and also upon the owners, leasees, and occupiers of

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- any lands inserted or which it may be proposed to insert in the award (being in all cases lands by this Act made liable to have an improvement charge placed upon them and comprised in the initial valuation) and at the time and place so appointed the arbitrator may proceed to hear and determine the matter of all such objections. The arbitrator may amend the assessment on the application either of any objector or of the corporation. Provided that if he insert in the award any lands or the name of any person not included in the original assessment or increase the amount of the charge on any lands such notice as the arbitrator may think sufficient shall be given to the persons affected to enable them to object to such insertion or increase ;
- (ii.) The arbitrator may also, if he think fit, adjourn the hearing and direct any further notices to be given ;
 - (iii.) No objection to any assessment, or award which could be made under this Act shall be otherwise made or allowed in any court proceeding or manner whatsoever ;
 - (iv.) All the reasonable and proper costs of any such arbitration and of such inquiry before a jury and incident thereto shall be borne by the corporation unless the arbitrator shall award or the jury shall give their verdict for the same amount of charge as shall have been proposed in the assessment or for a greater amount in which case each party shall bear his own costs incident to the inquiry or arbitration and the costs of the arbitrator or jury shall be borne in equal proportions : Provided that if it shall appear to the arbitrator or in case of an inquiry by a jury to a judge of the High Court that any objection to the amount proposed to be assessed was frivolous and vexatious the arbitrator or judge may make such order concerning the costs of the person making such objection as to him may seem meet ;
 - (v.) Where such costs are ordered to be paid or become payable by an objector or objectors the arbitrator may if he thinks fit add such costs to the charge apportioned on the estate or interest of the objector or objectors ;
 - (12.) When and so soon as the assessment and any amendments thereof, and all objections thereto respec- Final award.

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tively shall have been disposed of as by this section directed the arbitrator shall issue an award under his hand, which shall be final and conclusive for all purposes ;

A copy of the award shall be published once in the *London Gazette* and notice of such award shall be served upon the owners or reputed owners, lessees or reputed lessees and occupiers of the lands affected thereby ;

Effect of charge.

(13.) If no objection as hereinbefore provided be made to the assessment, the amount defined by the assessment or the amended assessment (and if an award be made as hereinbefore provided then the amount defined by the award) as the charge in respect of any lands shall be a charge and incumbrance thereon, and the corporation shall cause the same to be registered as a land charge under the Land Charges Registration and Searches Act 1888 ;

Incidence of charge.

(14.) The charge in respect of any lands as fixed by the award shall (subject to the following provision) begin to be payable on the first day of April or October as the case may be next ensuing after the date of the award, and shall be payable thereafter half-yearly until redeemed and satisfied.

The improvement charge charged upon any lands shall be apportioned between the several parties having any estate or interest in such lands as they shall agree, or as in case of difference shall be determined by the arbitrator.

The arbitrator in making the award shall take into consideration all the circumstances of the case and in particular shall consider the several interests in such lands and the time at which they severally expire and may make the commencement of such charge dependent on the expiration of any term of years or other period, or on the happening of any event as he shall deem fair and equitable. The improvement charge charged upon any lands shall be apportioned between the several parties having any estate or interest in such lands as they shall agree, or as in the event of no agreement being made, or so far as any such agreement shall not extend, shall be determined by the arbitrator, who may apportion the incidence of such charge as between the free-

hold and any other estate or interest in the lands, **Appendix**
 during the period of any existing term of years for
 which the same is held at the date of the award ;

- (15.) The charge due in respect of any lands shall be **Collection of charge**
 payable to the corporation on demand, and may be
 collected on behalf of the corporation by such
 persons as they may appoint for that purpose ;

Where any lands in respect of which a charge is payable
 are occupied by any person, the corporation may
 collect the annual payments due in respect of the
 charge from such person. But if he be not the
 person for the time being liable to the payment of
 the charge or any part thereof, then he may deduct
 from any rent payable by him the charge or any
 part thereof payable by any other person, and any
 person receiving such rent (if he be not the person
 liable to pay the charge or any part thereof) may
 in like manner deduct from any rent payable by
 him the charge or such part thereof as is payable by
 any other person, so that the proper deduction may
 in each case be made from the rent paid to the
 person or persons by whom the charge or any
 portion thereof is payable ;

In case of default being made in any payment due to the
 corporation in respect of the charge the amount
 thereof may be recovered in any court of summary
 jurisdiction, and in addition the corporation may
 have and exercise such remedies for recovering
 the same as are conferred by the Conveyancing and
 Law of Property Act, 1881, with regard to sums
 payable by way of rent-charge ;

- (16.) Any owner, lessee, or occupier of any lands subject **Redemption of charge.**
 to the charge or any other person interested therein
 may from time to time redeem the same by agree-
 ment with the corporation, and shall be entitled
 from time to time to redeem the charge upon any
 lands on payment to the corporation of any arrears
 thereof, and of a sum equal to thirty-three times the
 amount of such charge, and from and after such
 redemption the charge shall be deemed to be satis-
 fied, and shall be no longer payable in respect of
 the said lands, and the corporation shall give a
 certificate under their common seal that the said

charge is redeemed and satisfied, which shall be sufficient evidence thereof ;

- (17.) If (A) any owner or owners of any lands in respect of which a charge is payable under this section who alone or together have power to sell the fee simple of such lands subject to any lease or leases thereof or (B) any such owner or owners of any such lands and any lessee or lessees of the same for a term having not less than twenty-one years to run at the date of the initial valuation who alone or together have power to surrender his or their lease or leases so that the terms of years thereby created shall merge in the fee simple and inheritance of such lands are of opinion that such charge is greater than it should be in reference to the enhancement or supposed enhancement of the value of such lands by reason of the improvement they may at any time within six months after such charge first becomes payable by notice in writing served upon the corporation require them to purchase their estate and interest in such lands and the corporation shall thereupon purchase and take the same accordingly at the value specified in the initial valuation ;
- (18.) If within one month after the receipt of any such notice by any owners or by any owners and lessees requiring the corporation to purchase their estate and interest in any lands in manner aforesaid the corporation shall elect to abandon the proposed charge to which such notice relates the corporation may give notice by registered letter addressed to such owners or to such owners and lessees of their intention to abandon the same and thereupon the corporation shall be relieved from any liability to purchase such lands or the estate or interest therein to which the notice relates and the charge so far as relates to such lands or any estate or interest therein shall cease provided that the corporation shall pay to the owners or to the owners and lessees as the case may be all costs charges and expenses reasonably and properly incurred by them in consequence of the said lands having been included in the assessment such costs failing agreement to be settled by a master of the high court ;

Purchase
of estate
or term in
certain
cases.

- (19.) Where the incidence of the charge as between any persons interested in the lands is regulated or affected by contract or covenant, the arbitrator shall have regard to such contract or covenant, and this Act shall not be deemed to alter the effect of such contract or covenant ; Appndx. As to existing contracts.
- (20.) The expression "lands" in this section shall not include any main pipe or apparatus for supplying gas or water or any culvert, pipe, tube, apparatus or wire for electric lighting, telephone or hydraulic purposes, or any estate or interest in land in respect of any such main pipe, apparatus, culvert, tube or wire. "Lands" not to include pipes, &c.
- (21.) The Arbitration Act, 1889, shall, subject to the provisions of this section apply to the arbitrator and procedure before him, except that the award shall be final, and binding on all parties.(a) Arbitration Act to apply.

(a) These clauses were inserted in the London County Council (Tower Bridge Southern Approach) Bill, by a committee of the House of Commons, in the session of 1895.

**THE CORPORATION OF EDINBURGH v. THE
NORTH BRITISH RAILWAY COMPANY.**

The following is the text of Lord Shand's proposed Finding(a) in the arbitration between the Corporation of Edinburgh and the North British Railway Company, as to the value of the land taken by the latter in Princes' Street Gardens. The corporation first made a claim for 80,000*l.* The claim was increased to 150,000*l.* ; and it was this sum that was put before the arbiters. Lord Shand finds that the fair value of the land taken was in all 26,500*l.* :—

**PROPOSED FINDINGS IN ARBITRATION BETWEEN THE COR-
PORATION OF EDINBURGH AND THE NORTH BRITISH
RAILWAY COMPANY.**

Edinburgh, 25th October, 1892.

Having fully considered the evidence, oral and written, and the arguments of counsel, and having also learned the views of the arbiters, orally and in writing, at a meeting with them, when they intimated that they were unable to agree to an award, and having repeatedly visited and inspected the ground, I propose to find that the sum due and payable to the claimants by the respondents, the North British Railway Company, as compensation to the claimants :—

First.—For their interest in the lands and hereditaments taken by the company by virtue of the provisions of the North British Railway (Waverley Station, &c.) Act, 1891, and Acts therewith incorporated under their notice and relative schedule referred to in the proceedings, and specified in the Joint Minute, No. 61 of Process, and for the damage or injury sustained, and to be sustained by the remaining lands belonging to the claimants, by or through the taking of said lands and hereditaments, amounts to the sum of twenty-three thousand five hundred pounds. *Second.*—For their

(a) The "findings" are called "proposed findings," but they were acquiesced in.

interest in the lands belonging to the Bank of Scotland referred to in the said notice and relative schedule and joint minute amounts to the sum of one thousand pounds. And, *Third*, for their interest in the lands belonging to the Crown, also referred to in the said notice, and relative schedule and joint minute, amounts to the sum of two thousand pounds—making in all the total sum of twenty-six thousand five hundred pounds.

I allow representations against these proposed findings to be lodged by either party within eight days from the date hereof.

(Signed) SHAND.

NOTE.—I have had no difficulty in holding that the principle of fixing the compensation payable by the company on the basis of reinstatement is quite inapplicable to the circumstances of the case. Where a church or public building or business premises are taken or so seriously interfered with by a railway company that they can no longer be properly used for the purpose for which they were erected or occupied, the cost of reinstatement is, generally speaking, a fair mode of fixing the compensation due. Even in that case it has never been held that the sum payable is to be taken on the footing that immediately contiguous ground must be substituted as the site for new buildings, and the costs of this paid for, though it may involve the purchase and removal of other buildings, however valuable, on such contiguous ground. In such cases the cost of reinstatement is given by taking the most suitable and convenient ground which can be obtained without imposing any such extraordinary condition as that of purchasing adjacent ground, however great its value, and though already covered with expensive buildings.

Again, reinstatement or the offer of a sum sufficient for the purpose, may often form a good answer to an extravagant claim, as, for example, in the case of an exorbitant claim under a fire insurance policy, or it might be even in a case like the present, where parts of a property have been taken. If the company could have pointed to garden ground which might be got on reasonable terms, and which, from its situation, would form a fair substitute for the ground taken, and as such might be added to the gardens, the cost of such reinstatement might form a just measure of the compensation to be paid for the ground appropriated. In this instance no such proposal can be made by the company, because the circumstances do not admit of it.

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In the case which has here occurred, of gardens or pleasure ground with an existing railway passing through them, as it has done for nearly half a century, it is impossible to suggest that, in consequence of the ground taken, the gardens have been now made unfit for the use to which they have been hitherto dedicated, or have been so seriously injured that substituted ground adjoining is required to render them useful and suitable for the purpose they now serve. Accordingly, the view presented by the first two witnesses for the claimants (resulting in a valuation of upwards of 150,000*l.*), that the company must pay for the two acres appropriated, and which have been taken in strips of varying breadth from different parts of the banks of the gardens adjoining the existing line, at the estimated rate which it would cost the company to acquire land in Princes' Street, to be substituted by way of reinstatement, is so extravagant that it required only to be stated to be at once rejected. If the principle were sound, it must go the length in its application of giving the corporation right to a sum which would not only pay, as the witnesses suggested, the enormous estimated value of the valuable sites or stances on which buildings now exist, but would also pay for the cost (under an Act of Parliament, which the legislature would never grant) of throwing Princes' Street considerably further to the north, and taking down the valuable buildings on its present frontage, an amount which no one could possibly estimate or predict.

Reinstatement being out of the question, how, then, is the ground to be valued? All of the witnesses on both sides were agreed that it was most difficult to find a clear means of putting a value in money on the land as now used. They concurred in thinking that the ground of Princes' Street Gardens, east and west, was in its present condition as garden and pleasure ground of much greater value to the city and the corporation than it would be if applied to any other purpose. There is no doubt of the truth of this, and the history of the gardens shows that the corporation have been all along, or at least for very many years, alive to the great importance of maintaining the deep and picturesque valley at the bottom of the Castle Rock, and of the green sloping banks on its southern sides, forming the separation between the new town and the old, as garden or pleasure ground, for this valley is the distinguishing feature of the centre of the city, which gives it so great beauty. As explained by Mr. Adam, the City Chamberlain, by various Acts of Parliament in the

beginning and middle of last century, the corporation acquired Appndx, what was then known as the North Loch, and the north bank of the Loch, and in a series of statutes, certainly from 1816 downwards, promoted and obtained by the corporation themselves, provisions were inserted to secure the preservation, in all time coming, of the ground for the purposes for which it is now used. By a statute passed in that year Parliamentary authority was given for the erection of St. John's Chapel at the west end of Princes' Street; but in the interests of the city, the statute prohibited the erection of any other buildings "on any part of the ground belonging to the community of the city on the south side of Princes' Street, excepting a gardener's or keeper's lodge, or hot-houses or conservatories," and thus secured that the ground now forming east and west Princes' Street Gardens, in so far as in the possession of the corporation, should remain an ornamental garden, park or pleasure ground in all time coming. Under powers conferred by the statute, the corporation in 1816, leased the Gardens west of Hanover Street to the west end proprietors of Princes' Street, but only for the purpose of having the ground laid out as "a garden, nursery for trees, or pleasure ground, or under grass, or otherwise embellishing and enclosing the same." These proprietors not only carried out expensive operations by drainage, and the laying out and planting the grounds and otherwise, but themselves acquired by purchase part of St. Cuthbert's glebe, and also obtained a lease from the Crown of a considerable extent of ground adjoining the Castle Rock, all of which was added to the gardens; and they further paid the annual expense of maintenance of the whole till the year 1876. In that year the corporation not only resumed possession of the ground, but also obtained right to the additional ground which the west end proprietors had acquired. The statute of 1876, promoted by the corporation, provided "that the corporation, after acquiring the rights of the Princes' Street proprietors, shall maintain the ground in such a way as to preserve the amenity of the district," and "shall enforce such regulations as shall prevent any use thereof which would be detrimental to the grounds as ornamental gardens." Since 1876 the corporation has borne not only the whole taxes and public burdens and expense of maintenance of the gardens (being about 1,500*l.* a year for both East and West Gardens), but on resuming possession expended a sum of capital expenditure—about 20,000*l.*—in laying them out to the best advantage. Of the

Appendix. East Princes' Street Gardens it is only necessary to say that, after having been for some years under lease to Mr. Cleghorn, a nurseryman, the possession was resumed by the corporation about 1844, and has been continued since that time.

The witnesses for both parties are agreed that, having regard to the past history of the ground, and to the fact that for so many years it has been occupied, and is still used as garden or pleasure ground, it is not possible to give a definite pecuniary value, by the test of transactions in ground so used, or with relation to any fixed or acknowledged standard of value of land so occupied. The subject of valuation is not only exceptional, but unique, and they concurred in suggesting that the only way of getting at a means of valuation is to assume that the ground were put to another purpose, the purpose which would command the highest price or return in money, and to take it as ground in the hands of the corporation free from all restrictions. They further agreed that the gardens, having regard to their situation in the city, should in this way be looked at as a feuing or building subject, and that as the corporation have used the grounds for a purpose more valuable to them and to the community they represent, than building purposes, at least "its fair and full value" (to use the words of Mr. Blyth, one of the leading witnesses for the company) or "the highest value of the land," as Mr. Barr suggests, "as building grounds," should be allowed. I entirely concur in this view. It is plain that the ground in this way must be regarded as free from all restrictions, for the case is not one in which a proprietor has been put under restrictions by a third party for the benefit of an adjoining property, in which case the property under restrictions might be seriously impaired in value, but rather one in which the proprietors—the community—have voluntarily imposed restrictions on themselves and the persons who are their administrators, in order to secure the most desirable use of the ground—a use more valuable than to sell or feu it for commercial or building purposes.

The corporation is thus to be paid, at all events, the fair and full value of the ground taken on the footing that the gardens might be sold or feued for building purposes. But an extraordinary difference—perhaps one may say the usual extraordinary difference which presents itself in all valuation cases—occurs here (though in this case somewhat exaggerated) as to what that value is, and also on the question what damage, if any, is done to the ground adjoining the lands taken. The

most valuable ground is that of East Princes' Street Gardens, Appndx. which may be said to be in the centre of the part of the city devoted to business purposes, and which is also in close proximity to the respondents' important railway station. The witnesses for the claimants value the ground taken at the rate of 23*l.* to 25*l.* a square yard in the East Gardens on the north side of the line, and at the rate of 12*l.* to 15*l.* a yard for the ground taken on the south side of the line, with the result of bringing out a sum of from 65,000*l.* to 70,000*l.*, for the ground taken from the East Gardens alone. The evidence for the company gives as the value of the ground taken from the north side, about 2*l.* a square yard ; of one portion to the south, with direct frontage to Waverley Bridge, 5*l.* a square yard ; and of the rest at or under 10*s.*, giving a total sum of between 6,000*l.* and 7,800*l.* In the West Gardens, as against 12*l.* and 6*l.* a square yard, the company's witnesses speak to 1*l.* and 10*s.* a square yard as the true value. I am quite unable to agree with the view presented by the witnesses for the corporation in the very high value they put on the ground ; and though I think the witnesses for the company have as regards the more important parts of it materially underestimated its value, they, in my judgment, come much nearer a true estimate. In support of the claimants' case relating to the East Gardens, evidence was led to show that the best use of the ground would be made by opening up a new street, in a line from the Waverley Bridge at one end to the mound at the other, about the centre of the ground between Princes' Street and the railway line ; the northern block having two frontages—one to Princes' Street on the north, and another to the new street to the south—and the southern block having its north front to the new street and its south end coming down to the railway wall ; and it was said that with such a street feuing rates might be got for the ground such as the rates per yard of ground fronting George Street, or such as certain of the rates (excluding the highest) in Princes' Street or of the average rates of the block from Princes' Street to George Street, including Rose Street. But the data on which the claimants' estimate (which is, of course, after all, a speculative estimate) proceeds are open to serious objections. In the first place, the configuration of the ground has to be considered. There is a great fall towards the railway line—very great for the breadth of ground to be dealt with—and all are agreed that this disadvantage must be overcome at large expense by a viaduct to support the new line of street,

Appendix. and by much underbuilding, particularly close to the railway line, where the rooms used for warehousing purposes, or otherwise, would be reached by descending instead of ascending stairs—a state of matters which cannot be said to be uncommon in this city. If the ground had been all on or near the level of Princes' Street, the question of valuation for building purposes would undoubtedly have been essentially different, but this is certainly not the case. Most, if not all, of the witnesses for the company say that the cost of viaduct and underbuilding would be so great as to exclude the idea of the use of the ground by building on any such scheme or plan, and that the only way in which it could be utilised to advantage would be by forming a street as a *cul de sac*, with a blind end towards the Mound, where the ground rises much higher. A leading witness for the city spoke of 14,000*l.* as the cost of unremunerative building; but I am quite satisfied from the evidence as a whole that the necessary expenditure would be greatly in excess of that sum, and I am the more readily induced to think so because the same witness proposed to run a similar street through the West Princes' Street Gardens on a viaduct, and with underbuilding; and it was, to my mind, clearly proved that the levels would not admit of this so as to yield any return for building purposes. In the East Gardens I am satisfied that the cost of a viaduct and the necessary underbuilding, in so far as the feuars might not be expected to undertake it themselves, would so seriously affect the return from rates as to reduce them to an extent not in any degree allowed for by the claimants' witnesses. Again, it is in my opinion clear that the rates taken for comparison, mainly from Princes' Street and George Street, are all much higher than could be obtained for the ground of the gardens. Of course, the stances fronting Princes' Street (which have little, if any, relation to the strip of land of more or less breadth adjoining the railway line now taken by the company) would command high rates. But even these rates would necessarily be very much lower than the present rates for frontage to Princes' Street, which are so high because of the open view southwards; and it further clear that so much additional ground in Princes' Street put in the market would also seriously diminish even that greatly reduced rate. It is also obviously fallacious to take the present rates in Princes' Street, which are those of an old-established street, the best in the city, as those which could be instantly got for ground

now unbuilt upon, and which must be the subject of a new plan or scheme involving the making up and supporting the ground by underbuilding. A very large allowance would require to be made for what is generally called "postponed value," or, in other words, for the years that must elapse before the ground was ready for building, and taken off and covered by buildings as it would be by degrees only, and it might be by slow degrees; and if this all applies even to the ground fronting Princes' Street, it must more certainly be true of the ground furthest away from that frontage and adjoining the railway line. When to these considerations there is added the fact that the rate which the witnesses for the claimants named was an "average rate" struck by including ground fronting the proposed street, and so of higher value, with the back ground, admittedly inferior and of lower value, without any attempt to deduct a sum on account of the advantage and value which the frontage ground would give to the ground lying at the farther point back, reasons sufficient to my mind have been given to show the very high estimates reached by the claimants' witnesses must be practically laid aside. This seems to me to be the result of an examination of the *data* on which these estimates are made.

I think, on the other hand, that while it is true that much of the land taken is part of the least valuable ground of the gardens, either as garden ground or feuing ground, and while it is also true that expensive underbuilding would be necessary, I do not think that the company has shown that a street with an exit at each end could not be made so as to make it quite worth while for the corporation, if that had been desired, to feu out the ground so as to give a return at remunerative rates, though at rates very far indeed below those given by the claimants' witnesses. The rates to be got after charging the cost of underbuilding would, as I have said, be much nearer the estimates given in evidence by the company. But they would, I think, be materially higher than these estimates so far as the East Gardens are concerned, for I do not doubt that a street in the situation proposed would become an important thoroughfare.

I attach no importance to the price fixed for land taken so long ago as 1844, when the railway was originally made through the gardens: nor the price paid by the West End proprietors for a purchase of part of St. Cuthbert's glebe, also a great many years ago; nor to the purchase made by the corporation from Lamond's trustees in 1876 of a con-

Appendix. siderable portion of ground lying below Ramsay Gardens, on which last purchase most of the company's witnesses placed much weight. That ground when sold by the proprietors was burdened with a lease having many years—viz., till 1915—to run. It had no convenient access, but adjoined and lay into the ground of the corporation, who alone could make any advantageous use of it by adding it to the gardens. There could not, I think, have been any competition for it in the market. Nor do I think that the rates obtained for fees in Jeffrey Street, which the company's witnesses all strongly founded on, have any application for purposes of comparison with the ground in question. There can be no doubt that the East Gardens, adjoining the business centre of the city, and immediately to the west of the station, if opened up by a thoroughfare leading westward, would be sought after for building purposes of a character and to an extent which Jeffrey Street, to the east of the North Bridge, and leading to the High Street and Canongate, could never be expected to do; and, in my opinion, the references to the rates for feuing ground in Jeffrey Street only weakened the evidence of the witnesses whose opinions were based on them.

There was, however, a transaction founded on by the company, which took place in 1875, to which I attach importance. In that year, the corporation, by voluntary agreement, sold to the company somewhere about 1,000 square yards of the ground on the north side of the East Gardens, lying direct and immediately contiguous to the ground now taken at 39s. 9d. a square yard. It may safely be assumed that, with the increase in the business and population of the city, ground in that neighbourhood has increased in value after a lapse of seventeen years, although nothing very definite on that subject has been proved. But it is difficult, if indeed possible, to conceive that the ground was sold for about 2l. a square yard, if it was worth anything like the rates of 24l. and 23l. which the corporation's witnesses now put upon it; and all the more difficult when it is added that the whole of the Waverley Station ground, of great extent, stands on the valuation roll at 3l. a square yard, and that an attempt by the assessor to raise the rate to 5l. in 1883 was resisted by the company successfully before Lord KINNEAR, as the judge in valuation causes. I do not say that either the transaction of 1875 or the valuation for purposes of taxation are at all conclusive, or afford a distinct means of now fixing

the value of the ground taken in the East Gardens at either Appndx. 2*l.* or 3*l.* a square yard, as the company maintain. Besides the lapse of time, the whole subject of the value of the ground has now been more thoroughly investigated, particularly with reference to its capabilities as a feuing subject, than it has hitherto been, and while 3*l.* a square yard was fixed for taxation purposes many years ago as the value of the station ground, this includes a large area under and to the east of the North Bridge, not of the same value as ground to the west; and a large area held under restrictions as to building, which undoubtedly affect its value, as was illustrated by the fact that the company on one part of their ground agreed some time ago to pay 15*s.* a square yard for the privilege of erecting shed roofs, still of a restricted height. The ground now in question must be regarded as unrestricted, and I am satisfied it is of greater intrinsic value from its situation than much of the ground valued overhead for taxation at 3*l.* a square yard. On the whole, and without entering into details, I have thought it right to increase materially the rates proposed by the company to be paid for the ground belonging to the corporation taken on the north side of the line, a part of which has a valuable frontage to the Waverley Bridge. As to the south side, I have also given an addition to the rate proposed by the company's witnesses for the ground adjoining Waverley Bridge, immediately to the south of the line, and which all of the company's witnesses admit to be valuable. The instances in the neighbourhood (and amongst others those mentioned by Mr. Barr) and the unrestricted character of the ground, as compared with the premises immediately opposite, seem to require this increase to be made.

In regard to the West Gardens, a considerable portion of the ground taken—particularly the ground belonging to the Crown—is part of a slope or embankment on the side of the railway which cannot be seen from the north side, from which it is entirely screened off, and, indeed, almost shut off, by plantation. The rates spoken to by the claimants' witnesses are much lower than in the East Gardens, but even these rates were claimed on the footing that the ground could be made available for feuing by means of a viaduct and under-building, and almost the whole of their evidence of value was based on this assumption. At the close of the case the claimants' counsel scarcely maintained that such a scheme was practicable looking to the expense it would involve.

~~At the same time~~. With a street or streets on the natural levels, which is the only other alternative, the rates to be expected must be greatly reduced, particularly for certain parts of the gardens which have been taken, and which on the south side are throughout the Crown property, of very little breadth. Taking the ground of the West Gardens generally, I thought it right to give some increase beyond the rates spoken to by the company's witnesses, excepting in the case of the narrow strip on the south side belonging to the Crown.

It must be understood that in fixing on the sums I propose to give, the compensation for ground taken has been arrived at viewing the ground as garden or pleasure ground, although the principal means of reaching the amount has been by regarding its commercial value as for building purposes. It may be said that the ground being even more valuable as pleasure ground to the corporation than it would be for feuing, there ought to be an allowance of more than the usual 10 per cent. for compulsory sale which is applicable to feuing property. Only one of the claimants' witnesses made this suggestion, which I have not adopted. But I have not lost sight of the point, and I have preferred rather to give what I regard as full rates so as to give effect to the view that as garden ground the land in the possession and use of the corporation and the city is put to its highest and best use. It must at the same time be kept in mind that though it is quite true that in one sense no sum of money could perhaps be named as compensation for the gardens as a whole, or for taking such parts as would destroy their beauty or usefulness, yet the portions taken here and there are in such a situation under embankment and otherwise that they are of much less value as garden ground than other parts which might be easily specified.

The corporation has made a claim for compensation for injury to their remaining ground in consequence of the taking of the land required by the company, and it is not disputed (1) that injury has been done in the West Gardens by the taking and removal of a large conservatory and certain accessories, which will make it necessary to put up, at least, one new house, as well as to execute work of a more or less expensive nature on other ground either adjoining or elsewhere in the gardens; and (2) that in the East Gardens a certain amount of reconstruction will be required, because an existing path to the extent of about 100 yards has been cut

Appndx.

away with a considerable part of one of the ornamental plots. The company's witnesses say that an outlay of about 1,363*l.* will make good the damage there done, including some further injury to the Bank of Scotland's ground, in which the corporation is interested, and to which special allusion will be made immediately. With this outlay, and after a screen of plantation has been put up at the Waverley Bridge end of the north side of the East Gardens at the expense of the company, it is maintained that the gardens will, to all effects, be as good as formerly. The corporation maintains that this sum will not by any means cover the actual cost connected with the removal and re-erection of the conservatory and the necessary rearrangement of parts of the gardens; and their witnesses not only state a much larger sum than 1,363*l.* to be necessary to cover this outlay, but estimate that even after the screen just alluded to is fully established, it is clear that the East Gardens will have sustained permanent injury to an extent which several of them estimate at 5,000*l.* I am of opinion that the company's estimate of the cost of necessary work is somewhat understated, and I agree in thinking that after all is done there will remain a permanent and appreciable injury to the East Gardens, and specially to the remaining ground near the Waverley Bridge on the north side. The configuration not only of the ground at that part, but of the gardens as a whole, will be changed and for the worse. Already the gardens at the east end are too limited and narrow as regards the space to the south of the Scott monument, and between the monument and the railway, and this narrowing has to some extent been caused by the company having acquired the ground they did in 1875. A comparatively small space of level ground was left at the bottom of the slope below the Scott Monument and next the railway wall, and any invasion of that ground which further narrows it between the foot of the slope and the railway line is, in my opinion, an injury to the gardens. The company under its notice has taken in all about an eighth or a ninth of the East Gardens, with the effect, as some of the witnesses express it, of now making the railway at that part the dominant feature in the view in a way which was not the case before. Further, at this important part the company has taken away a considerable extent of the level ground, of which there was already too little left, with the effect of creating what may be called a neck of ground, which is in disagreeable contrast with the

Appendix. much greater breadth of level ground next the line to the west. In this way the symmetry of the garden as a whole is prejudicially affected. I am satisfied that even a willing seller of such a garden would not consent to part with the ground taken at its fair and full value without being also compensated for the injury done to the garden generally by its being so taken at this particular part. I have accordingly allowed a sum on this account, but that of an amount considerably within the estimate of the witnesses for the corporation. In doing so I have not lost sight of the fact that this particular part of the gardens is not seen by persons walking in Princes' Street, but only by those using the gardens, or walking on the Mound or Waverley Bridge; but the injury has been done all the same, and forms a valid and just ground of claim.

The Solicitor-General very strongly urged that no sum ought to be allowed by way of compensation for damage done to the remaining ground in the hands of the corporation, because the ground taken would be paid for at feuing rates. I am clearly of opinion that this argument is unsound. It would lead to this, that because feuing rates are to be taken into account as a means of getting at the value of the ground taken as garden ground (and no better means can be suggested), the company, on paying the value so estimated, would be free from any claim for damage to the remaining ground, however great that damage might be. One of the corporation's witnesses did state that, as a feuing subject, he thought the remaining ground was damaged for feuing purposes. Had he proposed to pursue that subject, on which much might have been said, and to enter into details to support this view, I should have held the evidence to be of no weight or bearing on the matter to be decided. Though it has been found to be necessary in the special circumstances to look at feuing value in order to reach garden value as to the ground taken for which no proper standard can be found, it would, I think, have been wrong to consider an estimate damage or injury to the remainder as a feuing subject. There is no necessity to do so, and no real difficulty in estimating the injury or damage done to the gardens as gardens by the taking of the ground which the company under its statutory powers has acquired.

There are two parts of the lands taken which *must be* separately considered and dealt with. As to the 958 yards taken from the ground belonging to the Bank of Scotland on

Appndx.

the south side of the line, and practically forming part of the East Gardens, I have to state, at the request of the counsel for the company, that I have valued it—with the ordinary addition for compulsory sale and having in view the injury done to the adjoining ground—at the sum of £2,000 ; and of this sum I have allowed the corporation one half, being, in my opinion, the value of the corporation's interest in that ground. On the question of value it is to be observed that the ground has a long frontage to Market Street, and though the descent is considerable, I do not think this would render it unremunerative as feuing ground ; indeed, several of the company's witnesses valued this ground, which is near to Cockburn Street and the Waverley Bridge, at £1 per square yard. I do not think there would be so great a difficulty about making an access as some of the company's witnesses represented ; but if there were any such difficulty, and the ground hypothetically is to be taken as dedicated to building, it is impossible to doubt that an arrangement would be made between the corporation and the bank, the only parties interested in the whole stretch of ground from the Waverley Bridge to the Mound, by which (it might be on terms) the corporation would give such ground as might be necessary for access by a road to be continued through the whole ground. Again, here it was contended by the counsel for the company that nothing ought to be allowed as compensation to the corporation for their interest in this ground ; but to this view I cannot assent. The corporation, in selling the ground to the bank, stipulated that it should be planted, and so kept as pleasure ground, the object, apparently, being to enlarge the stretch of such ground across the valley to the south side for the pleasing effect which would be produced generally from Princes' Street and the East Gardens, and so in effect adding to the extent of these gardens. It may be fairly assumed, also, that the bank proprietors not unwillingly agreed to this restriction ; for the ground, when occupied by grass and trees, is an important advantage to the appearance of the bank itself, and probably greatly better so occupied than if covered by buildings such as now exist in Market Street. There are thus two parties interested in the ground—the bank as proprietors and the corporation as having the right, important to them as the owners of the East Princes' Street Gardens, to prevent building, and to require that the ground shall be used for ornamental purposes. Why should this latter interest be treated as of no value ? The argument

carried to its legitimate result would lead to this, that the company should get the ground for nothing, or for little more than nothing. The bank and corporation between them have the full proprietary rights in the ground. The company, however, say to the corporation—you have no right of any value, for you can only insist on the ground being kept for ornamental purposes. Against the bank they might similarly plead in answer to their claim. You have but a bare title to the ground, and no interest in it of any value, for the corporation has you bound to keep it as ornamental ground in all time coming. It is to my mind clear that this reasoning leading to such a result is fallacious and unsound. If the interest be joint, and the parties interested find that the particular arrangement they have made can be pleaded so as to give the company the ground under its true value (which I think cannot be), they could at any time alter that arrangement. The true value of the ground must be paid to those owning or interested in it. The question of the division of this value as between them is a separate matter, and this, I think, would be clear if the corporation and the bank were here as joint claimants. I am disposed to think the corporation's interest is rather the more valuable of the two; but the fair mode of division will be to take the corporation as interested to the extent of one-half and the bank to the extent of the other half.

There is still another piece of ground in a very special and involved condition as regards the parties interested in it, and which must be separately dealt with. I refer to the ground in West Princes' Street Gardens which is vested in the Crown as regards title, but which was leased to the West End Princes' Street proprietors in 1818, and to which the corporation have now right under the statute and assignation and conveyance of 1876. By the lease the Crown, on the narrative that the west end proprietors (who were then in possession of the gardens generally under the lease they had obtained from the corporation) had applied to them for the ground thereby let "for use and occupation for the purpose of draining and improving" it, granted the lease to the lessees "and their successors" to endure "henceforth for and during and until the ground shall be wanted for the public service," the rent stipulated being £32 a year, being the grazing rent which the Crown had previously received. The ground let was described as the north back of Edinburgh Castle, and the south and west banks of the castle, and

included marsh ground, requiring to be drained, adjoining Appndx. what was then known as the North Loch. The lessees took possession, and at considerable expense, on the faith of the endurance of the lease, drained the ground, and incorporated it with the West Princes' Street Gardens, and laid it out as pleasure-ground, and it has ever since been so possessed—i.e., for a period of seventy-six years. The corporation acquired right to the lease in 1876, and since that time has had the beneficial possession, using the ground as part of the gardens, planting it, and maintaining it as pleasure-ground, and has paid the rent and public burdens in respect of it annually. Of this ground 2,366 square yards have been taken by the company, and it has become necessary to fix the compensation to be given to the corporation for their interest in it. In my opinion the total value of the ground so taken, with the addition of a rate for compulsory sale, is 4,000*l.* All of the witnesses have again taken a feuing value as a means of ascertaining the value of this ground as garden ground, on the supposition that in some way, by arrangement between the Crown and the corporation, it might have been fued. It is a matter of great difficulty to determine what proportion of the total value of the ground taken ought to be paid to the corporation in respect of their interest. The claimants' witnesses suggest that the whole should be so paid, because they regard the Crown as having granted what is in substance a perpetual lease. There is, no doubt, a reservation of right to resume possession "for public purposes" if the ground should be so required; but no proposal to resume has been made, though the lease has subsisted for nearly eighty years, and none of the witnesses has been able to suggest any public purpose for which the War Department could require it. The land, or at least the greater part of it, unless it were combined with ground belonging to the corporation, seems to be altogether unsuited from want of access and otherwise for buildings of any kind, and even were this not so, and it could be represented that a barrack or other similar building would be useful there, public opinion would, in my view, be so strong against any such use of the ground as to prevent any public department from attempting it. The contingency of resumption of the ground cannot, therefore, I think, be regarded as at all serious, and as the lease in that view is one in perpetuity, and which excludes the possibility of feuing for profit, and as the Crown's substantial interest is limited to a rent of 82*l.* a year for the

The question whether the "adaptability" of the land taken to the purposes for which it is to be used, is to be taken into consideration as an element of value in compensating the owner, is so frequently used in arbitrations, that it is a matter of some importance to have the full text of the only judgments which have been delivered as to this matter. "Adaptability" as enhancing the value of the land taken was raised by the claimant in the arbitration between the Countess Ossalinsky and the Manchester Corporation. After the award had been made the matter came before the High Court of Justice on the 13th April, 1883, and, so far as we know, the case in the High Court of Justice has not found its way into any of the law reports. Under the circumstances we have set out the judgments of GROVE and STEPHEN, JJ., *in extenso*. We are indebted to the town clerk of Manchester for the transcript from the shorthand notes from which these judgments are taken.

**IN THE MATTER OF AN ARBITRATION BETWEEN THE COUNTESS
MARY OSSALINSKY**

AND

**THE MAYOR, ALDERMEN, AND CITIZENS OF THE CITY OF
MANCHESTER.**

Judgment.

GROVE, J.—In this case a rule was obtained by the Attorney-General to set aside an award in the matter of an arbitration between the Countess Ossalinsky and the Corporation of Manchester. The arbitration was for the arbitrator to settle the value of certain land belonging to the Countess Ossalinsky, the greater part of it bounding Lake Thirlmere. She has in her land a long strip extending to nearly two-thirds along one side of the Lake Thirlmere, another portion of land upon the south side of Lake Thirlmere, and another small portion upon the east side; two other detached portions a small distance off, within a certain line which is

put here as a probable or possible extension of the lake of Thirlmere into a reservoir, and certain other portions of land which I do not think it necessary I should notice in detail. Appndx.

The arbitrator made his award, giving a sum of 64,000*l.* as the value of the land and a certain contingent valuation depending upon the opinion of the Court upon a special case, which he sets out at the end of his award.

The objections made on which the rule was granted were these: "That the arbitrator in estimating the value of the land has improperly taken into consideration its enhanced value, or alleged enhanced value, by reason of the water that may be collected, diverted, and impounded upon the land, and also by reason of its natural and peculiar adaptation for the construction of a reservoir." That is the point on which it was moved, and the point that has formed the main ground of argument by the Attorney-General and Mr. Davey who followed him.

The next objection is, "That the arbitrator has taken into consideration the increased value of the land in consequence of the powers conferred on the Corporation of Manchester by the Manchester Corporation Waterworks Act, 1879." That is the point which would, amongst these points, be the most serious legal objection if it had been founded upon this award. It then states another objection, that "He has taken into consideration the value of the land to the Manchester Corporation"—that is another form of the same objection, and then it says: "And that the said award is ambiguous and uncertain, and does not sufficiently declare in respect of what heads of claim the award has been made."

Those are in fact four objections, but they appear to be reduced to one, because the rule goes on to say: "Secondly that the arbitrator has improperly valued the reservations in favour of the lord of the manor of certain mines, minerals, rights, royalties, and franchises specified in an indenture." That we need not now deal with as the Attorney-General has not insisted upon it, and Mr. Davey has abandoned it. I do not think anything further need be said on that; and, therefore the principal head of objection is taking into consideration the enhanced value of the land for its adaptability—that is the word used by the arbitrator—for forming a reservoir or collecting and impounding water usefully for the purpose; and he has taken into consideration the enhanced value in consequence of the powers conferred on the Manchester Corporation.

Appendx. It is as well to state the general grounds upon which Courts set aside awards of arbitrators. It is merely using proverbially common language to say awards ought not to be set aside except on very strong grounds and for very strong reasons. The great advantage of an arbitration I have always considered is in the finality of the award, and I am sure at the present day one would not if one could help it, and was not legally obliged to do it, lessen the security which persons have who submit to the increased expense of arbitrations by removing the main element of value of them to litigants from their finality. You have an arbitrator who decides the law and the facts. You have not got a series of motions and appeals, interlocutory and final—perhaps not even finally ending when there is a decision in the House of Lords because on certain grounds a new trial may be got. I do not think it would be desirable to increase the uncertainty or the enormous expense of our legal system by opening up any new ground for setting aside awards other than those which Courts have previously held to be good.

Now I do not pretend to give an exhaustive catalogue of the grounds upon which awards are set aside, but they are very few. One of the grounds on which Courts have set aside awards is where the award is bad on the face of it; where it is repugnant; where it shows in itself that it has not followed the law; or for any other objection which may appear on the face of the award. Secondly, improper conduct in the arbitrator; when he has refused to hear evidence, when he hears one side in the absence of the other, or any irregularity which, although it may not amount to moral wrong, or justify one in calling the award a corrupt award, yet is substantial and is improper conduct of the case which is entrusted to him. Thirdly, awards have been set aside where there has been a mistake by the arbitrator either of fact or law which he himself admits, and when the Court has before them evidence coming from the arbitrator that he himself admits he has made a mistake; and, fourthly when the arbitrator (and that is the only one that can apply at all to this case as far as I think)—has acted *ultra vires*—has gone beyond the powers which are conferred upon him. If that can be shown to a Court by appropriate evidence, they will set aside the award. The arbitrator has to decide upon the matters submitted to him, and not upon matters which he may think desirable to settle in relation to the parties, but which the parties agree to submit to him, which

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the law has not thrown upon him. I think those four, as far as I know, are all the grounds on which Courts have set aside awards. I should be very sorry ever to say that I had given an exhaustive definition, because such a thing is almost impracticable in legal matters, and in many other matters. Those are, I think, the grounds. The only one of those that can apply to this case is the latter one, that the arbitrator has acted *ultra vires*. In other words, that he has made an element of his calculation of the value of this land that which legally cannot or ought not to be an element in its consideration, namely, the enhanced value of the land on account of its capability of being used for diverting and impounding water or of being converted into a reservoir, or for any useful purpose for which persons would pay a substantial price. It appears to me that that in itself is not an objection to the award, and that the arbitrator ought to take that into consideration. If the land has what I may call an adventitious value, that is something beyond its mere agricultural or normal value, and that is a marketable value in this sense, that persons wishing, for a purpose for which the land is peculiarly applicable, to purchase that land, would give a higher price for that land, then the arbitrator has a fair right to take that into consideration; it is a matter no doubt contingent, but still it is a matter which is not to be ignored or put out of consideration by an arbitrator. Land may be agricultural land, but it may be so near a town that it is tolerably certain that in a few years it will be converted into building land—quite certain in a larger number of years, as far as we can speak of anything in the future being certain—it will be converted into building ground. It is quite true that land might be rightly valued at more than its value as agricultural land if the land had any other capabilities for railway, canal, or irrigating purposes, or for waterworks, or for anything else, and they are reasonable and fair capabilities—not far-fetched hypothetical capabilities but reasonably fair contingencies. Those are fair things to be considered by an arbitrator; not to give its full value as if the thing in prospect were actually accomplished, but to give the enhanced value—what it would sell to a willing purchaser for in consequence of its having these additional advantages. I cannot agree with Mr. Davey that that is not a matter which should be taken into consideration. I have some difficulty in understanding his proposition, that if one line of land is more advantageous for railway purposes than another that that land ought not to have an increased value as regards

• Appendix. the other on account of its value for railway purposes if it is in a district where there is a great probability or a reasonable likelihood of there being a railway constructed. It is quite another case when you come to the second head of objection here, namely, the particular value which the land is to one of the parties before the arbitrator. That is quite another ground. But supposing the general value is only given, if this land was probably certain, within a reasonable time, to be used for certain purposes which would give it a very much enhanced value, that is a matter for the arbitrator to take into consideration. I am clearly of opinion that it is, and that the arbitrator has rightly taken that matter into consideration.

Then comes the second head of objection, "That the arbitrator has taken into consideration the increased value of the land in consequence of the powers conferred on the Corporation of Manchester by the Manchester Corporation Waterworks Act, 1879, and has taken into consideration the value of the land to the Manchester Corporation where used for the purposes of carrying out the objects of, and the powers conferred by the said Act." That would be a serious objection to the award, and a fatal one, because, as far as my experience goes, it has been the invariable practice sanctioned by the Courts that arbitrators are not to value the land with reference to the particular purpose for which it is required, particularly where the matter is under Parliamentary powers with reference to what the parties who are taking the land under compulsory powers are obliged by their necessities, or what they suppose to be their necessities, to pay for it there—that it is to be excluded from consideration, and the only way it can or ought to be put forward at all is as a possible illustration of the probability of the land being useful for such a purpose. You must not look at the particular purpose which the defendants in the case before the arbitrator are going to put land to when they take it under Parliamentary powers or undertakings for any special purpose, but you may possibly use it as an illustration to anticipate or to answer an argument that the schemes thrown out by the plaintiff in this case are going to enhance the value of the land are not visionary, but are schemes with certain probability in them. I do not see any objection to that being used as an argument. This is a matter of fact. Did the arbitrator take this into consideration? As far as I can see he did not, at all events his award is perfectly consistent with his not having done so, and I cannot set aside an award merely upon some possibility

or guess that he might have done something wrong. I Append. cannot see any inconsistency or anything in his award which leads me to the necessary conclusion from the language he has used to show that he did take this into consideration. With regard to the part of his award which bears on the subject and which has been a good deal canvassed by the counsel at the bar, that is a part which really is no part of the award itself, in one sense of the word—that is not the portion of the award which determines the price, and appor-tions the price, but it is the explanation which is given with reference to this, and it occurs in that part of the award which incorporates or adds to the previous award the special case. The arbitrator says, “And by way of special case for the opinion of the High Court of Justice I hereby state and find as facts that the land and hereditaments respectively described and comprised in the said claim of the said owner have by themselves and in conjunction with other adjoining lands a natural and peculiar adaptation for the collection, diverting and impounding of water and as a suitable site for the construction of a reservoir.” Now he gives the grounds, or rather the conclusions which he has come to in estimating the value of the land, “I have in my awards and determina-tions hereinbefore contained in estimating the value of the land taken into consideration its enhanced value by reason”—not by reason of the Manchester scheme, not by reason of any-thing that I can see connected necessarily with the Manchester scheme, but “by reason of the water that may be collected diverted and impounded upon the said lands and heredita-ments of the said owner and also by reason of its natural and peculiar adaptation for the construction of a reservoir.” Now that alone certainly seems a fair and proper ground for an arbitrator to take into consideration. It does not at all apply in any way specifically to the Manchester scheme, but for any purposes the parties may for various purposes require the impounding of the water, or require a reservoir, or for many purposes no doubt useful in this case, it might be for supplying water to towns more or less large, but at any rate they may require it for other purposes, and all he says is, I have considered that as enhancing the normal value of the land, because the land is capable of being so used. Of course an arbitrator cannot give it both ways. If he gives the enhanced value in that particular he must deduct the agricultural value of the ground which is rendered useless for agricultural purposes by water which is impounded and made

Appendix. to take into consideration the language of counsel. There are extreme cases in every line of case; but merely because Mr. McIntyre made the most of the Manchester Corporation scheme, that is not a ground upon which we can set aside the award. Mr. McIntyre does very carefully (and, I think, every passage has been cited), though he talks about the Manchester scheme, always add the words that the water is equally convenient, or very convenient, for other places besides Manchester. But the arbitrator himself, and that is the only passage I will cite from this report, seems to put the matter upon the right ground, because, when after Manchester has been mentioned, and when this point of enhanced value is being argued, he says this: "I apprehend the argument is that where an owner has an area of land, which from natural circumstances and character is peculiarly suited to a particular purpose, that it is an element in the value, and is a matter for consideration how far it should enter into the compensation. If we take two properties, each of them capable of being made into a reservoir, but one is, by natural circumstances, and by a peculiar fitness of position and character, capable of being made into a reservoir at less expense, and the other at greater expense, then the question is, is it an element which would form part of the compensation which the landowner would be entitled to receive?" He does not give any opinion here upon that, but he does say afterwards in the award, that he has taken into consideration the enhanced value. It appears to me as he has put it here it is perfectly fair. He says nothing about the Manchester case, but really supposing it to be a property, which, by natural circumstances and peculiar fitness of position and character, is capable of being made into a reservoir, that seems quite a right observation, and he really himself put the argument as to that portion of it which he ought to have taken as an arbitrator, and which was a fair and legitimate subject for his consideration. How much he should give for that was a matter for him. What proportion of this contingent value he should give was a matter he must deduce from the witnesses, his observation of the ground, and his own general knowledge of the capabilities of the localities, and their surrounding neighbourhood. It seems to me, therefore, from this award, and the expression I have just quoted from the notes when this argument was presented to him, that he took the right ground. There is not a single fact stated from the shorthand writer's notes to show me that the arbitrator did that which

he ought not to have done, namely, based his valuation upon the particular circumstances and particular price which the Manchester Corporation might be interested to pay for this compulsory sale. I think, therefore, that fails. Of course, if I were to meet all the arguments of counsel I should occupy an unreasonable time, but that meets the two objections—the first and second objection—the second one being the formidable one, if made out, but it is not made out.

Upon the first of those objections we heard at some length Sir Henry James as to whether we could go into it or not, that is to say, whether we could inquire into counsel's speeches, evidence, and matters which took place before an arbitrator, and look at the shorthand writer's notes of evidence for the purpose of setting aside an award. My opinion certainly was, as I said to the Attorney-General at the time, that we could not certainly as a general rule, and I believe my brother STEPHEN expressed his view to the same effect, but we need not decide that question here, because we thought it better, and that it might possibly save expense in the end to the parties if we heard *de bene esse*, so to speak, what had to be said. I am of opinion that, having allowed the Attorney-General and Mr. Davey to go into this evidence—to enter at full upon the matter—they have not shown any grounds upon which this award could be set aside, therefore I need not give judgment on that, as to whether we ought to have heard this evidence as we have done. In my opinion the materials are insufficient to set aside this award.

Then comes the further objection, "The said award is ambiguous and uncertain and does not sufficiently declare in respect of what heads of claim the award has been made." I cannot find out any substantial ambiguity in this award—I mean reading it as it should be read, with a willing mind, to use the expression of Mr. Justice MAULE, that is, with a mind desirous of understanding what it means and not misunderstanding what it means. I have no difficulty at all in ascertaining the meaning of this arbitrator. No doubt there is a grammatical error in one part of it; a word is omitted or a word is used in perhaps not strictly the correct sense, but I have no difficulty in ascertaining what he means. He says: "I hereby state and find as facts that the lands," &c., "have by themselves and in conjunction with other adjoining lands a natural and peculiar adaptation for collecting, diverting, and impounding of water." That word may be incorrect, because the lands do not adapt themselves, and the word

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Appendx. would not be quite accurate. It would have been better if he had used the word "adaptability" instead of "adaptation," but it is impossible to misunderstand what he meant—that they are capable of being adapted.

Another objection was : "And as a suitable site for the construction of a reservoir"—they are capable of being adapted as a suitable site. No doubt there is an ellipsis, and it is not strict grammar. It does not say, and valuable as a suitable site, or adaptable as a suitable site,—some such word is wanted, or you want another word before it to carry on the second branch of the sentence ; but it is clear to anybody who does not strain his mind to make objections, and to find out whether the matter is unintelligible, because there is something which grammatically is not quite correctly expressed. If we were to upset awards on that ground, then it would be no use for parties to go to arbitration at all. In my opinion, there is no ambiguity in the fair sense of the word, that is to say, there is nothing which to a willing and intelligent mind, is not perfectly plain on the face of this award, and that there is no such ambiguity, nor is there any ambiguity in the claim set out, because this very claim is part of the general claim as to the value of the land. It is not specially mentioned in the notice to treat, but if you were to do that you would not clear up the things, but you would make them such complex legal documents that we should have a great many more applications to set aside awards than we have now if you were to have the notices all written as you would a deed or a document of that sort. I do not think its ambiguity would be increased, and the power of objecting to it would be very much increased indeed.

Then the last objection. I have already adverted to the reservations in favour of the lord of the manor. Mr. Davey has abandoned that. Supposing his finding is wrong upon that, that is no ground for setting aside this award.

Therefore, on all these grounds, I am of opinion that nothing has been shown to me to satisfy me that this award ought to be set aside ; and, as I said before, I am of opinion in order to set aside an award there should be a strong case. In this case I am of opinion that no such case has been made out, and, therefore, the rule must be discharged.

STEPHEN, J.—I am of the same opinion, and I agree so entirely with all that has been said by my brother GROVE that I should have expressed my own views on the subject very

shortly indeed were it not that the case has occupied a very considerable time, namely, a day and a half; but I think that very large part of that time has been spent in debating a matters which have ultimately resolved themselves into a small compass. In the first place, there was a very great debate as to whether the Attorney-General should be allowed to go into all that took place before the arbitrator with a view of showing that the arbitrator had in fact taken into his consideration, in the matter of awarding damages, things which he ought not to have taken into consideration. We permitted him to do so because we thought, upon the whole, it was the safer and more advantageous course to take for the parties. Whether we were strictly justified in what we did, according to law, I need not decide, but I only say that I think the decision which we have now given is not to be taken as a precedent tending to show that such an inquiry is proper. The fact is, that each case stands upon its own circumstances, that it is simply impossible to lay down general rules as to how far you can and how far you cannot go in inquiring into what passed before an arbitrator. There can be no doubt that a case might be imagined, in which the award might be perfectly good on the face of it, and in which, nevertheless, it might be proved, so as to leave no substantial doubt on the subject, that the whole arbitration had been conducted on a false basis—that matters had been introduced which ought not to have been introduced, and that damages had been given in respect of things which were not properly before the arbitrator. There are one or two cases in the books to which our attention has been fully called, in which inquiries of that kind were undertaken with various results.

I think, however, that having heard all that could be said upon the subject, first by the Attorney-General and next by Mr. Davey, I have as little hesitation as my brother GROVE in coming to the conclusion that the corporation have shown no cause which would justify us in setting aside this award, and that they have entirely failed to prove that the award does in fact award compensation in respect of any matter for which compensation ought not to have been awarded, or that the controversy before the arbitrator was conducted in a way in which it ought not to have been conducted.

The argument by which the Attorney-General sought to prove his case was so refined and so elaborate, and involved so long a series of steps that the mere intricacy of the argu-

Appndx.

Appendix. ment appeared to me to afford an uncertainty to it. The argument was something of this kind : Look at what Mr. McIntyre said when he opened the evidence before the arbitrator ; then look at what the witnesses said to the arbitrator ; then look at the value which was put upon the different matters upon which the arbitrator adjudicated ; then look again at some of the expressions in the award, and if you put the first three things together, one after the other, and construe what the arbitrator said by something which Mr. McIntyre inferred from something which the witnesses stated which is to be construed in reference to a case which Mr. McIntyre opened, and when you have put all that together you will see that it was morally impossible that he could have given so large a sum as he did give unless he had taken into account something which he ought not to have taken into account ; and, moreover, when you look at all these various matters over again for another purpose, you will be able to form an opinion as to what this forbidden thing was which he introduced into his award, and so rendered it void. That, I say, is something far too elaborate an argument in a matter of this kind. If such arguments were admitted you would have a motion for a new trial substantially upon every award which did not give satisfaction to both parties—in other words upon every award. The thing which it is impossible not to see, having heard the case argued from beginning to end, the plain truth is simply this, the arbitrator did award to the Countess Ossalinsky a very large sum of money—a sum of money considerably larger than anything that her opponents conceded she ought to have—considerably less than those which her more enthusiastic witnesses considered to be her due. In fact, he took something which may be described roughly as a kind of mean between the highest that was claimed for her by Mr. McIntyre's witnesses and the highest that was conceded to her by the Attorney-General's witnesses : it came in practice to something very much like that. Now, I do not say a word about that. It is extremely natural that the corporation of Manchester should not like it. It is extremely natural that they should use every means in their power to set it aside ; but what they really and truly want is to get what they consider an exorbitant award set aside ; and the reasons which they have given to have it set aside are all it seems to me a variety of subtleties by which they try to call in question that which it is a characteristic feature of arbitrators to exclude from question. That is the

way in which the matter struck my mind. I do not say one word as to the propriety of the award—neither for it nor against it. All I say is that on the face of it, it is a regular award, and as far as we have thought it right to inquire into what passed before the arbitrator—it must be observed we have shut out absolutely nothing that the parties could be desirous of bringing before us—I fail to see that there has been any such improper conduct or misconception of his duties proved on the part of the arbitrator as would be a ground for setting aside the award.

The case is one of a large amount and of some importance on other grounds, and although my brother GROVE has stated his views, and although I have stated my own agreement with them, I will, nevertheless, very shortly indeed, notice the different objections which have been made to this award, and the different grounds upon which those objections appear to me to fail.

The first objection is: "That the arbitrator in his award and determinations in the award contained has in estimating the value of the land improperly taken into consideration its enhanced value, or alleged enhanced value, by reason of the water that may be collected, diverted, and impounded upon the said land, and also by reason of its natural and peculiar adaptation for the construction of a reservoir." Now, leaving out the word "improperly"—that he did do that which is here described as an improper taking into consideration is undoubtedly true, because those words are copied out of part of the award, but for the reasons which have been given by my brother GROVE I think in doing so he did his duty. What I understand him to have said is this: The natural construction of this ground, a large part of which is owned by the claimant in this case, is extremely peculiar, it presents features so favourable for making a reservoir that they may be called almost unique, and that has been likened to a great number of things in the course of the argument. The commonest, and perhaps the fairest, illustration that may be taken may be this—it is like the common case of building land. There is land on which buildings may be raised—it is an every day practice—here is land which is suited for building; here is a railway near it; it is the intention of the railway company to put a station in the immediate neighbourhood which will enable people to build villas upon this land. Now, land so situated undoubtedly derives a considerably increased value from these circumstances, and if any person

Appndx.

Appendx. wishes to take that land, or say, if another railway company wishes to come in and cut across it, no doubt they would have to pay, not the agricultural value of the land, but they would have to consider the value of the land as building land, and also have to consider how its value as building land would be affected by the intention of the railway company to make a junction or to build a station in the neighbourhood. As to this particular piece of land, I will not say it is unique, but it is very nearly unique ; it is one of the small number of places which is capable of being made into a reservoir which would supply any towns with which they might be connected. We all know that Thirlmere lies very high—perhaps I have no right to import my own knowledge of the country into it, but I think it would not be very much less than 800 or 900 feet above the sea level—the top of the water—and with a large quantity of water at that level you might carry it to very nearly any large town in England, that being so it seems to me quite absurd to say that there is not a special value attaching to that particular matter, or to say that the Countess who owns a part of it should not be compensated on that footing. No doubt it has been pointed out very fully by the Attorney-General and by Mr. Horace Davey, that her land alone might not, or probably would not, make a reservoir, because it does not go all round the lake, and because parts of the land are scattered about. No doubt that is perfectly true, but then at the same time it contributes to it, it is absolutely essential to a reservoir, and no reservoir could be made in those parts without taking her land any more than a reservoir could be made on her land without taking the land of other persons in the neighbourhood. But when you come to consider the value of the land you have to take, you must assume that people will act in the usual way, and no doubt whenever any reservoir is made at Thirlmere it would be made under Parliamentary powers, which would be applied for by the persons who were desirous of making the reservoir, and that whether the water travelled northwards down to Keswick in that direction, or whether it travelled southwards in tunnels and so on to Manchester, or wherever it was wanted to go—wherever it might be wanted to go, and under whatever circumstances Thirlmere might be turned into a reservoir, it would be absolutely necessary that the Countess Ossalinsky's land should be taken, and it seems to me it would be altogether improper to deprive her of the benefit derived from that circumstance. I think that is all the arbitrator is alleged to

have done in this objection, and all that he is shown to have Appndx. done from an examination of the award.

Then it goes on to say, "That the arbitrator has taken into consideration the increased value of the land in consequence of the powers conferred on the Corporation of Manchester by the Manchester Corporation Waterworks Act, 1879, and has taken into consideration the value of the land to the Manchester Corporation where used for the purposes of carrying out the object of and powers conferred by the said Act." Those two objections are the same presented in slightly different forms. If they could be made out I think the award would be bad. Much was said, and many illustrations were suggested, and many discussions took place on this subject, but they all appear to me to come ultimately into a very small compass indeed, which may be stated thus : When a railway company, or any other person who takes land under compulsory power, is to pay for that land, you are not to make them, as it were, buy it from themselves ; you are not to take the value which, in their hands, it would acquire, and make them pay for it as if they had no compulsory power. That seems to rest upon a basis of perfect good sense, because, if you were, there would be really no value in those compulsory powers at all, but I do not see that the award does so, and I do see, on the contrary, that the award distinctly says, in the plainest language which the arbitrator can use, that he avoided doing so, and did not do so. He says, "I have in my awards and determinations hereinbefore contained in estimating the value of the land taken into consideration its enhanced value by reason of the water that may be collected, diverted, and impounded upon the said lands and hereditaments of the said owner and also by reason of its natural and peculiar adaptation for the construction of a reservoir but I have not allowed for or included any sum in respect of the enhanced value of the land by reason of its natural and peculiar adaptation in conjunction with other adjoining lands" for those purposes. I think when that is read in connection with the evidence which has been adduced, and upon which the Attorney-General and Mr. Horace Davey commented, to my mind it seems to me clear that what he tried to do was to put a value on the land, having regard to its fitness for the purpose of a reservoir, but not having regard either to the adjoining lands, which had advantages of their own, or to value attached to it by the Manchester scheme. He seems to me to have done what he could to avoid making the

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Manchester people buy their own improvements, and that is really what it comes to ; at all events, putting it at the lowest, I do not see the very smallest shadow of proof that he did not do so ; I see that there was evidence before him from which he might draw practically any inference which he liked. I see that he states in his award what the inferences are he did draw, and although the Attorney-General and Mr. Davey argued long and elaborately, and pressed us hard to say that in point of fact he had drawn the inference which he repudiated, and that in point of fact he had done what he tried hard not to do, I cannot follow that argument, and find as a fact that he did do so.

Therefore, on the whole I say, those two things are not made out. What is really made out is simply this : That he gave a very large sum by way of compensation, and without any arithmetical proof that he must have adopted a certain estimate—in the face of arithmetical proof that he did not adopt those estimates still we are told we must not suppose he drew an inference which he repudiates, because that inference can be logically justified on no other ground. I do not think it would be right to draw such an inference as that. That disposes of the second and third of those objections.

Then comes the ambiguity and uncertainty of the award, and I must say with regard to that I do not think I need add anything to what has been said by my brother GROVE. There is a little confusion or bad grammar, and I rather suspect, myself, there is a word or two left out there, but that is all that I can see in the matter. It would be trivial to insist on that.

Then, Mr. Davey also argued at some length that the plan was part of the award, and where as the award says that this land has a natural and peculiar adaptation for the construction of a reservoir, if you look at the plan the plan will show that the land by itself has no such natural adaptation for the purpose of a reservoir, because it does not go all round the lake. I think that is importing a kind of literality into the construction of a document of this kind which is to be deprecated, and which I should rather describe as doing one's best to misunderstand it instead of doing one's best to understand it. I think it is obvious what he means. He means this land is adapted for the purpose of a reservoir in this way, that by means of it anybody who got possession of other land would be able to construct a reservoir at very little expense, and that without it no reservoir could be constructed, and that therefore, it is

especially adapted for the construction of a reservoir, although Appndx. by itself it would not constitute a reservoir.

The last matter about the reservations was given up by Mr. Davey and also by the Attorney-General.

The result is that I agree with my brother GROVE that this rule must be discharged, with costs.

Mr. McIntyre.—Your Lordship will give us the costs?

GROVE, J.—The rule is discharged with costs.

**Appendix. STATUTES RELATING TO COMPENSATION PASSED
PRIOR TO THE LANDS CLAUSES ACT, 1845.**

THE ADMIRALTY (SIGNAL STATIONS) ACT, 1815.

55 GEO. 3, CAP. 128.

*An Act to enable His Majesty to acquire Ground necessary for Signal and
Telegraph Stations.* [29th June, 1815.]

Admiralty
may au-
thorise
persons to
survey and
mark out
lands for
signal or
telegraph
stations.

WHEREAS it is expedient that His Majesty should be enabled from time to time to procure and take, or purchase, either for a time or term of years, or in fee, as occasion shall require, all such lands or hereditaments as are, shall, or may be wanted for the purposes of signal or telegraph stations, and of making, preserving, and maintaining a free and uninterrupted communication between the respective signals or telegraphs erected or to be erected thereon, and of preventing and removing any obstructions thereto, either by buildings, trees, or in any other manner, together also with all necessary ways unto and from the same; be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall be lawful for the Lord High Admiral, or any three or more of the commissioners for executing the office of Lord High Admiral of the United Kingdom of *Great Britain and Ireland* for the time being, from time to time, by any writing under their hands, to authorise any person or persons to survey and mark out any lands or hereditaments which are, shall, or may be wanted for the purposes aforesaid, or any or either of them, and to treat and agree with the owner or owners thereof, or any person or persons interested therein, either for the absolute purchase thereof for the public service or for the possession thereof, for such time or term of years as the public service shall require.

For other powers of the Admiralty to take land, see the Admiralty Lands and Works Act, 1865, *ante*, p. 474, and the Coast Guard Service Act, 1836, *ante*, p. 437.

Obstruc-
tions to be
removed.

2. In case any obstruction should arise, grow, or be occasioned, or should be intended to be made between any two signal or telegraph stations, so as to impede the free communication between the said stations, it shall be lawful for the Lords Commissioners of the Admiralty to agree for the removal or prevention of such obstructions in the same manner and under the same powers and provisions, as are hereinafter provided for the acquisition of the lands or grounds necessary for the erection of the said signal or telegraph stations.

Bodies
politic, &c.,

3. It shall be lawful for all bodies politic or corporate, ecclesiastical or civil, and all feoffees or trustees for charitable or other

public purposes, and for all tenants for life and tenants in tail, and for the husbands, guardians, trustees, committees, curators, or attornies of such of the owners or proprietors of or persons interested in any such lands or hereditaments required for such public service as shall be females covert, infants, lunatics, idiots, or persons beyond the seas, or otherwise incapable of acting for themselves, to contract and agree with such person or persons authorised as aforesaid, either for the absolute sale of such lands or hereditaments, or for the grant of any lease either for any term of years certain therein, or for such periods as the public service shall require, and to convey, surrender, demise, or grant the same unto the said Lords Commissioners of the Admiralty, in trust for His Majesty, his heirs and successors, accordingly; and all such contracts, sales, conveyances, surrenders, leases, and agreements, shall be valid and effectual in law, to all intents and purposes whatsoever.

Appndx.

may contract for the sale of premises.

4. In case any such bodies or other persons hereby authorised to contract on behalf of themselves or others as aforesaid, or any other person or persons interested in any such lands or hereditaments which shall be so marked out and surveyed for the public service, shall for the space of fourteen days next after notice in writing, subscribed by such person or persons authorised as aforesaid, shall have been given to the principal officer or officers of any such body, or to such other persons hereby authorised to contract on behalf of others or interested themselves as aforesaid, or left at his, her, or their usual place of abode, refuse or decline to treat or agree, or by reason of absence shall be prevented from treating or agreeing with such person or persons authorised as aforesaid, or shall refuse to accept such sum of money as shall be offered by such person or persons as the consideration for the absolute purchase of such lands and hereditaments, or such annual rent or sum as shall be offered for the hire thereof, either for a time certain or for such period as the public service may require, then and in such case it shall be lawful for such person or persons so authorised as aforesaid to require two or more justices of the peace, or three or more deputy lieutenants (one of whom shall be a justice of the peace) or two or more deputy governors of the county, riding, stewartry, city, or place where such lands or hereditaments shall be, to put His Majesty's officers into immediate possession of such lands or hereditaments which such justices or deputy lieutenants or deputy governors are hereby required to do, and shall for that purpose issue their warrant under their hands and seals commanding possession to be so delivered, and shall also issue their warrants to the sheriffs of the county, riding, stewartry, city, or place wherein such lands or hereditaments shall be situate, to summon a jury, and every such sheriff is hereby authorised and required to summon and return a jury properly qualified of the number of twenty-four, and in the manner required by the laws of *England*, *Ireland*, and *Scotland* respectively, who shall meet at some convenient time and place to be mentioned in such summons, out of whom a jury of twelve shall be drawn in such manner as juries for the trial of issues joined in His Majesty's Courts at *Westminster* and *Dublin* are drawn by law in *England* and *Ireland* respectively, and in such manner as juries are drawn by law for the trial of offences in *Scotland*; and in case a sufficient number shall not appear, the said sheriff shall choose others of the by-standers, or that can speedily be procured, being qualified as aforesaid, and the said jurymen may be challenged by the parties on either side, but not the array; and the said justices, deputy lieutenants,

Persons refusing to sell, or to accept the consideration offered, two justices, &c., may put His Majesty's officers into possession, and a jury shall be summoned, who shall find the compensation to be made.

Appendx. or governors respectively, may summon witnesses, and adjourn any such meeting if jurymen or witnesses do not attend, and the jury, on hearing any witnesses and evidence that may be produced, shall on their oaths (which oaths, as also the oaths of such witnesses, the said justices, deputy lieutenants, or governors respectively, are hereby empowered and required to administer) find the compensation to be paid, either for the absolute purchase of such lands or hereditaments, or for the possession or use thereof, as the case may be.

Appeal to the Court of Exchequer, if in England or Ireland, and to the Court of Session if in Scotland.

5. Provided always, that if the Lord High Admiral, or the commissioners for executing the office of Lord High Admiral aforesaid, or any person interested therein, shall be dissatisfied with the verdict of any such jury, it shall be lawful for them or their attorneys in *England and Ireland* to apply to the Court of Exchequer at *Westminster* or *Dublin* respectively in the term next, and in *Scotland* to apply within fourteen days after the finding any such verdict to the Court of Session in *Scotland* in time of session, or Lord Ordinary on the Bills in time of vacation, and to suggest to the said Courts or Lord Ordinary respectively, that they have reason to be dissatisfied with such verdict, and forthwith give notice thereof to the said Lord High Admiral or commissioners or party (as the case may be), and thereupon in *England and Ireland* the proceedings that shall have been had and the verdict of such jury shall be returned into the said Courts of Exchequer respectively; and if it shall appear to the said Courts to be proper, a suggestion shall be entered on such proceedings as aforesaid, and a writ shall thereupon by rule of such Court or order of any judge of such Court be directed to the sheriff of the county where such lands or hereditaments shall lie, or if the same shall lie in two counties, to the sheriff of either of such counties, to summon either a common or special jury, according to the application that shall have been made on that behalf, and as the Court or as such judge shall allow, and who shall respectively be qualified according to law to appear before the said justice or justices of assize or *nisi prius* of that county at the next assizes or sittings of *nisi prius*, if the same shall not happen sooner than twenty-one days after such suggestion, otherwise at the next succeeding assizes or sittings; and the compensation to be paid either for the absolute purchase or for the possession or use of such lands or hereditaments, as the case shall be, shall at such assizes or sittings be ascertained by such jury, in like manner as any damages may be enquired of upon any inquisition or enquiry of damages by any jury before any judge of assize or *nisi prius*, and the verdict of such jury shall be returned to the said Court of Exchequer, and shall be final and conclusive; and in *Scotland*, if it shall appear proper to the said Court of Session or Lord Ordinary upon such application so to do, the said Court or Lord Ordinary shall order and direct the sheriff of the county where such lands or hereditaments shall lie, or if the same shall lie in two counties, the sheriff of either of such counties, to summon another jury in the manner in which juries are summoned in *Scotland*, properly qualified according to law, to appear before the Lords or Lord of Justiciary at the next circuit, if the same shall not happen sooner than twenty-one days after such application, otherwise at the next succeeding circuit; and the compensation as aforesaid for the lands or hereditaments (as the case may be) shall at such circuit be ascertained by a jury drawn from the jury summoned as aforesaid, in such manner as juries are drawn in *Scotland*, under the direction of the said Lords or Lord of Justiciary as aforesaid, and the

verdict of such last-mentioned juries shall be final and conclusive, without being subject to review or challenge of any kind, unless the Court that shall have allowed such enquiry shall think fit, on any application made within four days after the commencement of the succeeding term or session, if in *Scotland*, to order any new trial in relation thereto. **Appndx.**

6. Provided always, that it shall be lawful for any jury impannelled before any justice of the peace or magistrate, or deputy lieutenant or deputy governor, or before any judge of assize or *nisi prius*, to ascertain the compensation to be paid for any lands or hereditaments under this Act, and they are hereby required to ascertain and settle the proportion to be paid out of such compensation to any person or persons having any interest as lessees or tenants at will or otherwise, in any such lands or hereditaments, and the proportion to be paid out of such compensation shall be returned on the verdict: Provided also, that where any such enquiry before any judge of assize or *nisi prius*, or Lords or Lord of Justiciary, shall be had on the application of any such lessee or tenant at will, or other person having any inferior interest in any such lands or hereditaments, who may have been dissatisfied with the proportion of compensation settled by the jury to be paid in respect of such interest, it shall not be lawful for the jury in any such case to alter the amount of the entire compensation awarded by any former verdict to be paid for such lands or hereditaments, but only the proportion thereof to be paid to the person or persons having separate interest therein; and it shall not be lawful for any jury on any enquiry had before any judge of assize or *nisi prius* or Lords or Lord of Justiciary, as to any such compensation, on the application of the said Lord High Admiral or commissioners for executing the office of Lord High Admiral aforesaid, in any case in which the whole compensation awarded by the former jury, to alter the proportion that shall have been settled by any such former jury as to any separate interest in any such lands or hereditaments. ascertain-
ing the
compensa-
tion for
premises
shall settle
the propor-
tion to be
paid
lessees, &c.

7. Provided also, that it shall be lawful for the Court or judge or Lord Ordinary, making any such rule or order, to require that the party on whose application the same shall be made, shall give such security as shall to such Court, Judge, or Lord Ordinary seem proper for payment of costs under such circumstances as shall be specified in any rule or order made for that purpose. Courts to
require
security to
be given
for costs.

8. In all cases where any lands or hereditaments shall have been taken under the provisions of this Act, for any term of years or for such period only, as the public service shall require, it shall be lawful for the Lord High Admiral, or Commissioners for executing the Office of Lord High Admiral aforesaid, or any other person or persons so authorised as aforesaid, at any time before the possession of any lands or hereditaments which shall have been taken for the purposes aforesaid, shall be delivered up to the owner or owners thereof, or other person or persons acting on his, her, or their behalf, to take down and remove all such buildings or other erections which shall or may have been built or erected thereon for the public service, and to carry away the materials thereof, making such compensation to the owner or owners of such lands or hereditaments, or other person or persons acting on his, her, or their behalf, for the damage or injury which may have been In cases
where
lands are
taken for
any term
of years,
all erec-
tions for
the public
service
shall be
removed,
on deliver-
ing up the
lands
to the
owners.

Appendx. done thereto, or to the soil thereof, by the erection of any such building, or removing and carrying away the same, or otherwise, in consequence of the same having been occupied for the public service, as the said Lord High Admiral or the Commissioners for executing the Office of Lord High Admiral or such other person or persons authorised as aforesaid shall think reasonable, and as shall be agreed upon in that behalf, and if such owner or owners or other person or persons acting on his, her, or their behalf, shall not be willing to accept the compensation so offered, it shall be lawful for the said Lord High Admiral or Commissioners for executing the Office of Lord High Admiral aforesaid, or other person or persons so authorised as aforesaid, to apply to and require two justices of the peace of the county, riding, stewarty, city, or place, to settle and ascertain the compensation which ought to be made for such damage or injury as aforesaid; and such justices shall settle and ascertain the same accordingly, and shall grant a certificate thereof, and the amount of such compensation so settled and ascertained and certified shall forthwith be paid by the Treasurer of His Majesty's Navy for the time being, to the person or persons entitled thereto: Provided always, that nothing in this Act contained shall extend, or be construed to extend, to alter, prejudice, or affect any agreement which hath been or shall or may be entered into by any such person or persons authorised as aforesaid with any owner or owners of any such lands or hereditaments, or other person or persons acting on his, her, or their behalf, in relation to any such buildings or erections, but every such agreement shall remain valid and effectual in like manner, as if this Act had not been passed.

Purchase money belonging to incapacitated persons, &c., to be paid by the treasurer of the navy to the deputy remembrancer of the Exchequer for their use.

Money to be paid into the bank.

9. In all cases where any money shall have been or shall be agreed or shall have been or shall be found by the verdict of any jury to be paid or given either for the use or for the absolute purchase of any lands or hereditaments taken by virtue of this Act, belonging to any person or persons under any disability or incapacity, or not having the absolute interest therein, the same shall be paid by the Treasurer of His Majesty's Navy for the time being, into the hands of the Deputy of the King's Remembrancer of His Majesty's Court of Exchequer at *Westminster*, *Edinburgh*, or *Dublin* respectively, for the time being, for the use and benefit of such person or persons who is hereby authorised and required to receive or accept and to give a discharge for the same, and upon the acceptance or receipt thereof to sign a certificate to the barons or judges of the said Courts of Exchequer respectively under his hand, purporting and signifying that such money or other consideration was received or accepted by and paid to him in pursuance of this Act, for the use and benefit of such person or persons who shall be named and described in such certificate, and the said certificate shall be filed or deposited in the said Court of Exchequer at *Westminster*, *Edinburgh*, or *Dublin* respectively, and a true copy thereof signed by the Deputy Remembrancer of such Court shall and may be read and allowed as evidence for the purposes hereinafter mentioned; and the said Deputy Remembrancer is hereby required upon receipt of any such sum or sums of money as aforesaid, to pay the same into the Bank of *England*, or Bank of *Scotland* or Royal Bank of *Scotland*, or Bank of *Ireland*, as the case may require, and immediately upon the filing or depositing of such certificate the said lands or hereditaments shall be and become vested in or to the use of His Majesty, his heirs and successors.

10. The barons or judges of His Majesty's Court of Exchequer at *Westminster, Edinburgh, or Dublin*, of the degree of the coif, for the time being respectively, or any two or more of them, shall be and they are hereby authorised and empowered in a summary way upon motion or by petition, for and on behalf of any person or persons interested in or entitled to the benefit of the money so paid to and received by the Deputy Remembrancer or the interest or produce thereof, and upon reading the certificate directed to be signed by the said Deputy Remembrancer concerning the same as aforesaid, and receiving such further satisfaction as they shall think necessary, to make and pronounce such orders and directions for paying the said money or any part of the same, or for placing out such part thereof as shall be principal in the public funds or upon government or real securities, and for payment of the dividends or interest thereof, or any part thereof, to the respective persons entitled to receive the same, or for laying out the principal or any part thereof in the purchase of other lands or hereditaments to be conveyed and settled to, for, and upon the same uses, trusts, intents, and purposes as the said lands and hereditaments so taken stood settled at the time of the payment of such money as aforesaid, as near as the same can be done, or otherwise, concerning the disposing of the said money or any part thereof, and the interest of the same or any part thereof, for the benefit of the person or persons entitled to and interested in the same respectively, or for appointing any person or persons to be trustee or trustees for all or any of such purposes as the said Court shall think just and reasonable.

Appndx.

Barons of the Exchequer, &c., on petition of the parties interested to order the application of the money.

11. Upon the death or removal of any such Deputy Remembrancer, all stocks and securities vested in him by virtue of this Act shall vest in the succeeding Deputy Remembrancer for the purposes hereinbefore mentioned without any assignment or transfer; and all monies paid into the said banks respectively in pursuance of this Act, or remaining in the hands of any Deputy Remembrancer at his death or removal, and not vested in the funds or placed out on securities as aforesaid, shall be paid over to the succeeding Deputy Remembrancer for the time being.

On death or removal of deputy remembrancer, stocks and securities shall vest in successor.

12. If in any case the King's Remembrancer shall execute the said office in person, then and in such case the several trusts, powers, and authorities, by this Act vested in the said Deputy Remembrancer and his successors, shall, during such time as no Deputy Remembrancer shall be appointed, be vested in and be executed by the said King's Remembrancer for the time being.

Where there is no deputy, powers shall vest in the King's remembrancer.

NOTE.—The words omitted in the above Act are merely formal, and have been repealed by the Statute Law Revision Acts.

Appendx.

THE CHURCH BUILDING ACT, 1818.

58 GEO. 3, CAP. 45.

An Act for building and promoting the building of additional churches in populous parishes. [30th May, 1818.]

* * * * *

By this Act certain Commissioners were appointed to inquire as to where new churches were required, and when necessary to provide them; a sum of 1,000,000*l.* was voted to them to employ on this purpose. By 19 & 20 Vict. c. 55, their powers were transferred to the Ecclesiastical Commissioners. They had also power to assist parishes to build churches, and to lend money on the security of the church rates. These rates were, however, abolished by the Compulsory Church Rate Abolition Act, 1860 (31 & 32 Vict. c. 109). Power was given to them to purchase sites compulsorily for new churches, and persons under disability were enabled to sell. As the money has been expended and the churches provided in respect of which they were appointed, many of these powers may be regarded as obsolete. The power given by section 52 to enable the Commissioners to acquire a site for such parishes as are prepared to defray the expense would still seem to exist. This section is as follows:—

Where a parish desires to procure a site for a church, but the owner is under disability or unwilling to treat, commissioners may procure the same under this Act.

52. In every case in which any parish or extra-parochial place is or shall be empowered by any Act or Acts of Parliament to build any church or chapel, or enlarge any existing church or chapel, and also in every case in which any parish or extra-parochial place shall be desirous of building any church or chapel, or enlarging any existing church or chapel, and defraying the expense thereof, without any aid from the Commissioners in that behalf, and are not able to procure a fit and proper site for such new church or chapel or for enlarging such existing church or chapel, by reason of the inability of any person or persons, body or bodies interested in such site or any part thereof, to convey or make a good title to the same, freed and discharged from all incumbrances or shall be unwilling to treat for the sale thereof, or cannot agree for such sale and purchase, then and in every such case it shall be lawful for the said Commissioners, and they are hereby authorised and empowered, if, upon application made for that purpose, and upon a statement of all the circumstances of the case, they shall think it proper and expedient to proceed under the provisions of this Act to procure such site; and the expense of procuring such site shall be chargeable and charged upon the parish or extra-parochial place making such application, in like manner as in cases of money advanced for sites under this Act; and all the powers, authorities, provisions, and regulations, and clauses in this Act contained, in relation to procuring sites for churches to be built under the provisions thereof, shall extend and apply to the procuring and taking of such sites as fully as in any respect as if such churches or chapels were built under the provisions of this Act.

The sections as to acquiring sites are sections 34, 36, 38—54. They contain provisions corresponding to the jury clauses of the Lands Clauses Act, 1845, and the money is to be paid into the bank in cases of disability or failure to make a title. The powers of sale given to persons under disability have also

been extended by subsequent Acts; see, for example, 3 Geo. 4, c. 72; 5 Geo. 4, c. 103; 1 & 2 Vict. c. 107; 8 & 9 Vict. c. 70; 19 & 20 Vict. c. 104; 36 & 37 Vict. c. 50; 45 & 46 Vict. c. 21. Appendx

As the powers of compulsory purchase have been exercised rarely, if ever, during recent years it has not been thought necessary to set out these sections, or to deal with the matter more fully. On this subject the reader is referred to Phillimore's "Ecclesiastical Law," p. 2141, and to Trower's "Church Building Laws."

THE SEWERS ACT, 1833.

3 & 4 WILL. 4, CAP. 22.

An Act to amend the Laws relating to Sewers.

[28th June, 1833.]

* * * * *

By this Act, Commissioners of Sewers are empowered to purchase and take land for the purpose of altering, repairing, and widening existing drainage works. Powers for the same purpose and for making new works are also given by the Land Drainage Act, 1861; but the powers given by this Act are not thereby repealed, but may still be put in force. See the notes to the Land Drainage Act, 1861, *ante*, p. 444.

The following are the sections conferring the powers as to the taking and purchase of land :—

24. It shall be lawful for any Court of Commissioners of Sewers to treat, contract, and agree with the owners of and persons interested in any messuages, lands, tenements, hereditaments, and premises, and their appurtenances, for the purchase thereof or of any part thereof, for the purpose of widening, deepening, strengthening, maintaining, repairing, and amending any rivers, streams, watercourses, walls, banks, and other works, aids, and defences within the jurisdiction of Commissioners of Sewers, and for the loss or damage which such owners or persons may sustain thereby respectively; and it shall be lawful for all bodies politic, corporate or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees in trust, executors, administrators, and all other persons whomsoever, not only for or on behalf of themselves, their heirs and successors, but also for or on behalf of the person entitled in reversion, remainder, or expectancy after them, and for or on behalf of their *cestuique* trusts, whether *femes covert*, infants, or issue unborn, lunatics, idiots, or other person whomsoever, and to and for all *femes covert* who are or shall be seized of or interested in their own right, and to and for every person whomsoever, who is or shall be possessed of or interested in any such lands, tenements, hereditaments, or premises, or who shall sustain any damage as aforesaid, to contract with the said commissioners for the sale thereof respectively, or for the satisfaction to be made for the same or for such damage as aforesaid, and by conveyance to convey unto the said commissioners all or any of such messuages, lands, tenements, hereditaments, or premises, or any part thereof, for the purposes aforesaid, in manner hereinafter mentioned; and all contracts, sales, and conveyances which shall be so made shall be good, valid, and effectual, to all intents and purposes, without fine or recovery, and shall be a complete bar to all estates tail, and other estates, rights, titles, trusts, and interests whateo-

Commissioners authorized to contract for the purchase of lands, &c.

Appndx. ever, any law, statute, usage, custom, or other matter to the contrary notwithstanding; and all such bodies politic, corporate or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees, committees, executors, administrators, and all other persons shall be and are hereby indemnified for what they or any of them shall do by virtue or in pursuance of this Act.

Form of conveyance to commissioners. 25. All such conveyances of any lands, tenements, or hereditaments to be purchased by the said Commissioners of Sewers shall be expressed in the following or some similar form of words, as the circumstances of the case may require:

"I, _____, of _____, in consideration of the sum of _____, to me paid by six or more of the Commissioners of Sewers acting in and for several limits [*here describe the limits as set forth in the Commission of Sewers*], do hereby grant and release to the Commissioners of Sewers acting in and for the said limits all [*describing the premises to be conveyed*], and all my right, title, and interest in and to the same and every part thereof, to hold to the said commissioners, their successors and assigns for ever, by virtue of the several Acts and laws now in force concerning sewers. In witness whereof I have hereto set my hand and seal this _____ day of _____, in the year of our Lord _____."

Where persons shall neglect or refuse to treat, &c., commissioners to issue their warrants to the sheriff to impanel a jury.

26. If any such body politic, corporate or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees or feoffees, committees, executors, administrators, or any other person interested in any such lands, tenements, hereditaments, or premises, or sustaining any damage as aforesaid, upon notice to him or them given, or left in writing at the dwelling-house or place of abode of such person, or of the principal officer of any such bodies politic, corporate or collegiate, corporations aggregate or sole, tenants for life or in tail, or at the house of the tenant in possession of any such lands, tenements, hereditaments, or premises, shall, for the space of thirty days next after such notice given or left as aforesaid, neglect or refuse to treat, or shall not agree in the premises, or by reason of absence shall be prevented from treating, then and in every such case the said Commissioners of Sewers, or any six or more of them, are hereby empowered from time to time to issue out their warrant or warrants under their hands and seals to the sheriff, bailiff, or other returning officer of the county or place wherein the matter in question shall lie, or if such sheriff, bailiff, or other returning officer shall be immediately interested in such matter, then to one of the coroners of such county or place, commanding such sheriff, bailiff, or other returning officer, or coroner, to impanel, summon, and return a jury; and the said sheriff, bailiff, or other returning officer, or coroner, is hereby required accordingly to impanel, summon, and return twenty-four men, qualified according to the laws of this realm to be returned for trials of issues joined in His Majesty's Courts at *Westminster*; and the persons so to be impanelled, summoned, and returned are hereby required to come and appear before the justices of the peace for the county or place in which such lands, tenements, hereditaments, or premises shall lie, or the matter in question or dispute shall arise, at some Court of general or quarter sessions of the peace to be holden in and for the same county or place, or at some adjournment thereof, as in such warrant or warrants shall be appointed, in order that out of them a jury of twelve may be sworn, to

inquire touching the matters in question ; and in case a sufficient number of jurymen shall not appear at such time and place, the said sheriff, bailiff, or other returning officer, or coroner, shall return other honest and indifferent men that can speedily be procured to attend that service, to make up the said jury to the number of twelve ; and all parties concerned may have their lawful challenges against any of the said jurymen ; and the clerk of the peace for the said county or place, or his deputy, is hereby empowered and required to summon before the said justices all such persons as shall be thought necessary to be examined as witnesses touching the matters in question, and may order and authorize the said jury, or any six or more of them, to view the place or places or matters in controversy ; which jury (upon their oaths, to be administered by the said justices, which oaths, as also the oath to such person as shall be called upon to give evidence, the said justices are hereby empowered to administer) shall inquire of, assess, and ascertain the sum or sums of money to be paid for the purchase of such lands, tenements, or hereditaments, or the recompense to be made for damages that may or shall be sustained as aforesaid, and to settle and ascertain in what proportions the sum or sums of money so assessed shall be paid to the several persons interested in the premises ; and the said justices shall give judgment for such purchase moneys or recompense so to be assessed by such juries ; which said verdict, and the judgment thereupon pronounced as aforesaid, shall be binding and conclusive to all intents and purposes against all parties, bodies politic, corporate and collegiate, and all persons whomsoever.

Appndx.

Jury may be challenged. Witnesses to be summoned, and examined upon oath. Jury to assess damages.

Verdict of the jury to be binding.

27. Provided always, that if any such sheriff, bailiff, or other returning officer, or coroner, or his deputy or agent, shall make default in the premises, every such person shall for every offence forfeit the sum of twenty pounds ; and if any person so summoned and returned as aforesaid on such jury shall not appear, or appearing refuse to be sworn, or being sworn refuse to give his verdict, or in any other manner wilfully neglect his duty, contrary to the true intent of this Act, or if any person so summoned to give evidence shall not appear, or appearing refuse to be sworn or examined or to give evidence, every person so offending, having no reasonable excuse, to be allowed by the said justices, shall for every such offence forfeit and pay such sum as the said justices shall appoint, not exceeding the sum of five pounds for any one offence.

Commissioners may impose a fine on sheriff, witnesses, &c., making default.

28. All the agreements, contracts, sales, and conveyances, and also all verdicts and judgments, which shall be made and given in relation to any such lands, tenements, and hereditaments as aforesaid (such verdicts and judgments being certified by the clerk of the peace of the county or place in which such verdict and judgment shall have been given), shall be delivered to and deposited with the clerk of the sewers for the county, limits, or district wherein such lands, tenements, or hereditaments are situate, and shall be filed with the rolls of the Court or Commissioners of Sewers of such county, limits, or district ; and the same, or a true copy thereof, shall be admitted as evidence in all Courts whatsoever ; and all persons shall have liberty to inspect the same, and take copies thereof, upon paying for every such inspection the sum of one shilling, and for every such copy not exceeding seventy-two words the sum of fourpence, and so in proportion for any greater number of words.

Agreements to be filed with the clerk of the sewers.

Appendx. 29. In case any such jury or juries shall deliver a verdict for more money as a satisfaction for such lands, tenements, or property, or for any such loss or damage, than what shall have been offered by such commissioners for the same before the summoning or returning the said jury or juries, then and in such case the costs and expenses of summoning and returning the said jury and witnesses, and all other expenses attending the hearing and determining of such difference, shall be borne and paid by the said commissioners out of the same fund as the said purchase or compensation money is hereby directed to be paid; and such costs and expenses shall be ascertained and settled by an officer of one of His Majesty's superior Courts of Record at *Westminster*, to be nominated, in case of dispute, in the county of *Middlesex* by the Lord Chief Justice of the Court of King's Bench, and in every other county by the senior judge of the gaol delivery for the time being; but if any such jury or juries shall deliver a verdict for no more or for less money than shall have been offered by the said commissioners before the summoning such jury or juries, then such costs and expenses (to be ascertained and settled in like manner) shall be borne and paid by the person with whom such commissioners shall have such controversy or dispute, and shall and may be levied by distress and sale of the goods and chattels of the person liable to pay the same by warrant under the hands and seals of two justices of the peace for the county or place within which such verdict and judgment shall have been given; and the overplus (if any) after such costs and expenses, and the charges of such distress and sale, are deducted, shall be returned, upon demand, unto the owner of such goods and chattels.

From what fund purchase and compensation moneys are to be paid. 30. Every sum of money and recompence to be agreed for or assessed as aforesaid shall be paid for out of any monies in the hands of the said commissioners which may be levied on the messuages, tenements, lands, and hereditaments which shall receive benefit or avoid damage by or from such widening, straightening, deepening, repairing, and amending as aforesaid, or by or from making and maintaining any new walls, banks, sewers, guta, gotes, calcies, sluices, floodgates, cuts, and other works, aids, and defences; and upon payment to such parties or persons, or their agents, or left at their respective usual places of abode, or with the tenant in possession of such lands, tenements, hereditaments, and premises, or into the Bank of *England* in manner directed by this Act (as the case may be), then such lands, tenements, hereditaments, and premises respectively shall be vested in such commissioners, and shall and may be taken and used for straightening, widening, deepening, repairing, and amending such rivers, streams, ditches, gutters, sewers, and watercourses, or for making and maintaining any new walls, banks, sewers, guta, gotes, calcies, sluices, floodgates, cuts, and other works, aids, and defences; and all parties and persons whomsoever shall be divested of all right and title to such lands, tenements, and hereditaments.

Application of compensation money exceeding 200*l*. 31. If any money shall be agreed or assessed to be paid for the purchase of any lands, tenements, or hereditaments purchased, taken, or used by virtue of the powers of this Act, by any Commissioners of Sewers, which shall belong to any body politic, corporate, or collegiate, or to any feoffee in trust, executor, administrator, husband, guardian, committee, or other trustee, or for or on behalf of any infant, lunatic, idiot, *feme covert*, *cestuique* trust, or to any other person whose

lands, tenements, or hereditaments are or may be limited in strict or other settlement, or to any person under any other disability or incapacity whatsoever, such money shall, in case the same shall amount to or exceed the sum of two hundred pounds, with all convenient speed be paid into the Bank of *England* in the name and with the privy of the Accountant-General of the Court of Exchequer, to be placed to his account there *ex parte* the Commissioners of Sewers for whom such lands, tenements, or hereditaments shall be taken, pursuant to the method prescribed by an Act passed in the first year of the reign of His late Majesty King George the Fourth, intituled *An Act for the better securing monies and effects paid into the Court of Exchequer at Westminster on account of the sutors of the said Court, and for the appointment of an Accountant-General and two masters of the said Court, and for other purposes*, 1 Geo. 4, c. 35. and the general orders of the said court, and without fee or reward; to the intent that such money shall be applied, under the direction and with the approbation of the said Court, to be signified by an Order made upon a petition to be preferred in a summary way by the person who would have been entitled to the rents and profits of the said lands, tenements, and other hereditaments, in the purchase or redemption of the land tax, or in the discharge of any debt or debts, or such other incumbrances, or part thereof, as the said Court shall authorise to be paid, affecting the same lands, tenements, or hereditaments, or affecting other lands, tenements, or hereditaments standing settled therewith to the same or the like uses, trusts, intents, or purposes; or where such money shall not be so applied, then the same shall be laid out and invested, under the like direction and approbation of the said Court, in the purchase of other lands, tenements, or hereditaments, which shall be conveyed and settled to, for, and upon such and the like uses, trusts, intents, and purposes, and in the same manner, as the lands, tenements, or hereditaments which shall be so purchased, taken, or used as aforesaid stood settled or limited, or such of them as at the time of making such conveyance or settlement shall be existing undetermined and capable of taking effect; and in the meantime and until such purchase shall be made the said money shall, by order of the said Court, upon application thereto, be invested by the said Accountant-General in his name in the purchase of Three Pounds *Per Centum* Consolidated or Three Pounds *Per Centum* Reduced Bank Annuities; and in the meantime and until the said bank annuities shall be ordered by the said court to be sold for the purposes aforesaid the dividends and annual produce of the said Consolidated and Reduced Bank Annuities shall from time to time be paid, by the order of the said Court, to the person who shall for the time being have been entitled to the rents and profits of the lands, tenements, or hereditaments to be purchased as aforesaid, in case such settlement or purchase were made.

32. Provided always, that if any money so agreed or assessed to be paid for any lands, tenements, or hereditaments purchased, taken, or used for the purposes aforesaid, belonging to any corporation, or to any person under any disability or incapacity as aforesaid, shall be less than the sum of two hundred pounds, and shall amount to or exceed the sum of twenty pounds, then and in all such cases the same shall, at the option of the person for the time being entitled to the rents and profits of the lands, tenements, or hereditaments so purchased, taken or used, or of his guardian or committee in cases of infancy, idiocy, or lunacy, to be signified in writing under Application of compensation money when less than 200*l.* and not less than 20*l.*

Appendx. their respective hands, be paid into the Bank of *England* in the name and with the privy of the said Accountant-General, and to be placed to his account as aforesaid, in order to be applied in manner hereinbefore directed; or otherwise the same shall be paid, at the like option, to two or more trustees to be nominated by the person making such option, and approved by six or more of the commissioners taking such lands, tenements, or hereditaments, such nomination and approbation to be signified in writing under the hands of the nominating and approving parties, in order that such principal money and the dividends and interest arising therefrom may be applied in manner hereinbefore directed, so far as the case may be applicable, without obtaining or being required to obtain the direction or approbation of the said Court of Exchequer.

Application of compensation when less than 20*l*. **33.** Provided also, that when such money so agreed or assessed to be paid as before mentioned shall be less than the sum of twenty pounds, then and in every such case the same shall be applied to the use of the person who would for the time being have been entitled to the rents and profits of the lands, tenements, or hereditaments so purchased, taken, or used as aforesaid, in such manner as the said commissioners, or any six or more of them, shall think fit; or in case of lunacy, idiocy, or infancy, then to his guardian or committee, to and for the use and benefit of such person so entitled.

Persons in possession to be deemed lawfully entitled to the premises until the contrary shall be shown to the Court of Exchequer. **34.** Where any question shall arise touching the title of any person to any money to be paid into the Bank of *England* in the name and with the privy of the Accountant-General of the said Court of Exchequer, in pursuance of this Act, for the purchase of any lands, tenements, or hereditaments to be purchased in pursuance of this Act, or to any bank annuities to be purchased with any such money, or to the dividends or interest of any such bank annuities, the person who shall have been in possession of such lands, tenements, or hereditaments at the time of such purchase, and all persons claiming under such person, or under the possession of such person, shall be deemed and taken to have been lawfully entitled to such land, tenements, or hereditaments, according to such possession, until the contrary shall be shown to the satisfaction of the said Court of Exchequer; and the dividends or interest of the bank annuities to be purchased with such money, and also the capital of such bank annuities, shall be applied and disposed of accordingly, unless it shall be made to appear to the said Court that such possession was a wrongful possession, and that some other person was lawfully entitled to such lands, tenements, or hereditaments, or to some estate or interest therein.

If compensation money is refused, or titles not made, or if persons to whom money assessed cannot be found, **35.** In case the person to whom any sum or sums of money shall be assessed or agreed for the purchase of any lands, tenements, or hereditaments to be purchased by virtue of this Act, shall refuse to accept the same, or shall not be able to make a good title to the premises to the satisfaction of the said commissioners or any six or more of them, or in case such person to whom such sum or sums of money shall be so assessed or agreed to be paid as aforesaid cannot be found, or if the person entitled to such lands, tenements, or hereditaments be not known or discovered, then and in every such case it shall and may be lawful to and for the said commissioners, or any six or more of them, to order that the said sum or sums of money so assessed

or agreed to be paid as aforesaid to be paid into the Bank of *England* **Appndx.**
 in the name and with the privity of the Accountant-General of the Court of Exchequer, to be placed to his account, to the credit of the money to be paid
 parties interested in the said lands, tenements, or hereditaments describing them), subject to the order, controul, and disposition of the into the bank, sub-
 said Court of Exchequer; which said Court of Exchequer, on the ject to
 application of any person making claim to such sum or sums of order of
 money, or any part thereof, by motion or petition, shall be and is Court
 hereby empowered, in a summary way of proceeding, or otherwise, as to of Ex-
 chequer.
 the said court shall seem meet, to order the same to be laid out and
 invested in the public funds, and to order distribution thereof, or
 payment of the dividends thereof, according to the estate, title, or
 interest of the person making claim thereunto, and to make such other
 order in the premises as to the said Court shall seem just and reason-
 able; and the cashier of the Bank of *England* who shall receive such
 sum or sums of money is hereby required to give a receipt for the same
 (mentioning and specifying for what and for whose use the same is
 received) to such person as shall pay any sum or sums of money into
 the Bank of *England* as aforesaid.

36. Provided always, that where, by reason of any disability or Court of
 incapacity of the person or corporation entitled to any lands, tene- Exchequer
 ments, or hereditaments to be purchased under the authority of this may direct
 Act, the purchase-money for the same shall be required to be paid payment of
 into the Court of Exchequer, and to be applied in the purchase of expenses
 other lands, tenements, or hereditaments, to be settled to the like uses, in cases
 in pursuance of this Act, it shall and may be lawful to and for the said where pur-
 Court of Exchequer to order the expenses of all purchases from time to chases of
 time to be made in pursuance of this Act, or so much of the expenses other lands
 as the said Court shall deem reasonable, together with the necessary are made.
 costs and expenses of obtaining such order, to be paid by the said
 commissioners, or any six or more of them, who shall from time to time
 pay such sum or sums of money for such purposes as the said Court
 shall direct; and the said commissioners shall and may reimburse
 themselves all such payments as shall be so made by them as aforesaid
 in the manner directed, and out of the rates to be raised, levied, and
 collected for such purposes respectively, under the powers and provisions
 of the said recited Acts and of this Act.

37. It shall not be lawful for any Court of Sewers in making Houses
 any new walls, banks, sewers, cuts, gotes, calcies, sluices, floodgates, and build-
 tumbling bays, and other works, reparations, amendments, aids, and ings, &c.,
 defences authorised to be made and executed by the said recited Acts not to be
 and this Act, or any or either of them, to take down, remove, taken
 or make use of any house or building, or any garden, yard, or paddock, or without
 any park, planted walk, or avenue to a house, or any inclosed ground consent.
 planted as an ornament or shelter to a house, or planted and set apart
 as a nursery for trees, or any part thereof respectively, without the
 consent in writing of the owner or proprietor thereof respectively, or of
 the person, body politic or corporate, hereby authorised to sell and
 convey as aforesaid, first had and obtained.

38. Upon payment or legal tender of such sum or sums of money Vesting
 as shall have been contracted or agreed for between the parties, land in
 or assessed by such juries in manner aforesaid, for the purchase commis-

Appendx.

Commissioners of
sewers on
payment
of pur-
chase
money.

of any such messuages, lands, tenements, hereditaments, and premises or as a compensation for losses or damages as herein mentioned, to the proprietor or proprietors of such messuages, lands, tenements, hereditaments, and premises, or to such other person or persons, bodies politic or corporate or collegiate, as shall be interested therein or entitled to receive such money or compensation respectively, within thirty days next after the same shall be so agreed for or assessed, or upon payment of such sum or sums of money, within the said thirty days, into the Bank of England, in manner herein directed and required, for the use of the persons entitled thereto, it shall be lawful for the said commissioners, and their agents, servants, and workmen, to enter upon such messuages, lands, tenements, hereditaments, and premises respectively, and thenceforth such messuages, lands, tenements, hereditaments, and premises, together with the yearly profits thereof, and all the estate, use, trust, and interest of any person, bodies politic, corporate, or collegiate, therein, shall become and be vested in the said commissioners for ever; and such payment or tender shall not only bar all right, title, claim, interest, and demand of the person, bodies politic, corporate, or collegiate, to whom the same shall or ought to have been made, but also shall extend to and be deemed and construed to bar the dower of the wife of every such person, and all estates tail, and all other estates in reversion and remainder of his or their issue, and of every other person, bodies politic, corporate, or collegiate whomsoever therein.

Enabling
commis-
sioners to
sell lands,
&c., not
wanted.

39. It shall and may be lawful for Commissioners of Sewers, or any six of them, in whom any lands and hereditaments shall be vested by virtue of this Act, to sell and dispose of the same or any part thereof, either together or in parcels, as they shall find most convenient and advantageous, to such person as shall be willing to contract for and purchase the same; and the money to arise and be produced by the sale or sales which may be made by the said Commissioners of Sewers of any land or hereditaments as aforesaid shall be applied to the purposes of making and maintaining sewers works in the limits, valley, level, or district in which such land or hereditaments so sold as aforesaid shall lie or be, but the purchaser thereof shall not be answerable or accountable for any misapplication or nonapplication of such money; Provided always, that the said Commissioners of Sewers before they shall sell and dispose of any such land or hereditaments shall first offer to sell the same to the owner of the adjoining land or ground; and an affidavit made and sworn before a master or master extraordinary in the High Court of Chancery, or before one of His Majesty's justices of the peace for the county, riding, or division in which such land and hereditaments shall lie, by some person not interested in the premises, stating that such offer was made by or on behalf of the said commissioners, and that such offer was not then and thereupon agreed to or was refused by the person to whom the same was so offered, shall in all courts whatever be sufficient evidence and proof that such offer was made, and was not agreed to or was refused by the person to whom such offer was made (as the case may be); and in case such person shall be desirous of purchasing the same, and he and the said commissioners shall differ and not agree with respect to the price thereof, in such case the price thereof shall be ascertained by a jury in manner hereinbefore directed with respect to the disputed value of premises to be purchased by Commissioners of Sewers in pursuance of this Act; and the expense of hearing and determining such difference

First offer
to be given
to owners
of ad-
joining
ground.

shall be borne and paid in like manner as hereinbefore directed with respect to purchases made by the said Commissioners of Sewers, *mutatis mutandis*. **Appndx.**

40. All such conveyances of any lands, tenements, or hereditaments to be sold or disposed of by the said Commissioners of Sewers shall be expressed in the following or some similar form of words, as the circumstances of the case may require :

Form of conveyance from commissioners.

We, six of the Commissioners of Sewers acting in and for several limits [*here describe the limits as set forth in the Commission of Sewers*], in consideration of the sum of _____ to us paid by _____ do hereby grant and release to the said _____ all [*describing the premises to be conveyed*], and all right, title, and interest of the Commissioners of Sewers in and to the same and every part thereof, to hold unto the said _____ his heirs, executors, administrators, and assigns for ever. In witness whereof we have hereto set our hands and seals this _____ day of _____ in the year of our Lord _____.

* * * * *

NOTE.—The words omitted in the above sections are merely formal, and have been repealed by the Statute Law Revision Acts.

THE HIGHWAY ACT, 1835.

5 & 6 WILL. 4, CAP. 50.

An Act to consolidate and amend the laws relating to highways in that part of Great Britain called England. [31st August, 1835.]

* * * * *

The powers conferred upon the surveyor of the highways by this Act have been conferred by the various Highway Acts on the highway authorities constituted from time to time under these Acts. The highway authorities are now, since the Local Government Act, 1894, practically the urban and rural district councils for their respective districts, and the county councils in respect of main roads.

By the Public Health Act, 1875, s. 144, the urban sanitary authority was constituted the highway authority for urban sanitary districts, with all the powers of the surveyor of highways, and these urban sanitary authorities continue to exercise these powers as urban district councils. This applies to boroughs, improvement Act districts, and local board districts.

In rural districts considerably more confusion existed, as the highway authority might be either the surveyor elected annually by the parish vestry under this Act, or a board under this Act. It might be a highway board under the Highway Act, 1862, as amended by the Highway Act, 1864, which board exercised a jurisdiction over a highway district which consisted of several parishes.

By the Highways and Locomotives (Amendment) Act, 1878, it was provided that highway districts should in future be formed so as to correspond with rural sanitary districts, and the guardians were to become the highway authority.

In rural districts all these highway authorities are abolished by section 25 of the Local Government Act, 1894, subject, however, to a proviso that the county council may postpone for three years the operation of that section as regards highways, or for such further period as the Local Government Board

Appendx. may, on the application of such council, allow. In place of these various authorities the rural district council shall have all their powers and shall be their successor. See, for example, *Re The Isle of Wight Highway Commissioners*, 72 L. T. 569.

As regards main roads, they are under the control of the county councils unless within a certain time the urban authority claim to retain the powers and duties of maintaining, repairing, and enlarging them. If the urban authority have not so claimed them, the county council is wholly to maintain and repair such part as is within their district, and the county council, "for the purpose of the maintenance, repair, improvement, and enlargement of and other dealing with such road, shall have the same powers and be subject to the same duties as a highway board."

The Highway Act, 1835, contains various powers of dealing with land compulsorily, and in respect of the exercise of which powers compensation is awarded. Besides the powers contained in this Act, the highway boards had power to purchase land or easements for the purpose of improving highways under the Highway Act, 1864 (27 & 28 Vict. c. 101), and the Lands Clauses Acts are incorporated for this purpose with the exception of the clauses relating to the purchase of land otherwise than by agreement.

The provisions of the Highway Act, 1835, which deal with the subject of this Work, are here set out. By section 22, the surveyor of county bridges has the same powers as regards these bridges and the approaches as the highway surveyor. The county councils have now the duty of maintaining county bridges, and besides the powers under this Act, they have power of purchasing and taking land and buildings and taking materials under the County Bridges Acts of 1740 (14 Geo. 2, c. 33), 1803 (43 Geo. 3, c. 59), and 1814 (54 Geo. 3, c. 90). See "Pratt on Highways," 13th edit., pp. 740—743, 753.

Power to
use adjoining
ground
as a tem-
porary
road,
where
highway is
ruinous,
&c.

25. It shall be lawful for the surveyor to make a road through the grounds adjoining to any ruinous or narrow part of any highway (not being the site or ground whereon any house stands, nor being a garden, lawn, yard, court, park, paddock, plantation, planted walk, or avenue to any house, or inclosed ground set apart for building ground, or as a nursery for trees), to be made use of as a public highway whilst the old road is repairing or widening, making such recompense to the proprietor and occupier of such grounds for the damages they may thereby sustain as the justices at a special sessions for the highways assembled may think reasonable, such sum so awarded as a recompense to be recoverable in the same manner as any fines and forfeitures are recoverable under this Act.

By the Highway Act, 1864, s. 46, justices assembled in petty sessions may exercise any jurisdiction which they are authorised under any of the Highway Acts to exercise in special session.

Section 103 deals with the recovery of fines, which is done by distress and sale of the goods of the person ordered to pay.

* * * * *

Tenant for
life, &c.,
may re-
nounce
damages,
&c.

49. It shall be in the power of tenants for life, ecclesiastical and lay corporations, and the proprietors of entailed estates, and of the trustees and guardians of any person under any legal disability or incapacity, to give up and renounce every claim of damage or compensation for such ground and materials as any highway may occupy on their respective properties, and that such renunciation shall be equally binding on the heirs and successors of such persons: Provided nevertheless, that such renunciation of claim of damage or compensation be in writing, and signed by such tenant for life, proprietor, trustee, or guardian in the presence of two witnesses, or in the case of corporations in such manner

and form as is usually adopted by such corporations respectively; and such renunciation shall be enrolled at the quarter sessions which shall be held next after the signing or execution thereof.

* * * * *

Appendx.

Surveyor may take materials from waste lands, &c.

51. It shall and may be lawful for every such surveyor, in any waste land or common ground, river or brook, within the parish for which he shall be surveyor, or within any other parish wherein gravel, sand, stone, or other materials are respectively likely to be found (in case sufficient cannot be conveniently had within the parish where the same are to be employed, and sufficient shall be left for the use of the roads in such other parish), to search for, dig, get, and carry away the same, so that the said surveyor do not thereby divert or interrupt the course of such river or brook, or prejudice or damage any building, highway, or ford, nor dig or get the same out of any river or brook within the distance of one hundred and fifty feet above or below any bridge, nor within the like distance of any dam or weir, and likewise to gather stones lying upon any lands or grounds within the parish where such highway shall be, for such service and purpose, and to take and carry away so much of the said materials as by the discretion of the said surveyor shall be thought necessary to be employed in the amendment of the said highways, without making any satisfaction for the said materials, but satisfaction shall be made for all damages done to the lands or grounds of any person or persons by carrying away the same, in the manner hereinafter directed for getting and carrying materials in inclosed lands or grounds; but no such stone shall be gathered without the consent of the owner of such lands or grounds, or a license for that purpose from two justices at a special sessions for the highways, after having summoned such owner to come before him, and heard his reasons, if he shall appear and give any, for refusing to give his consent.

52. Provided always, that nothing in this Act contained relative to the gathering or getting of stones or other materials shall extend to any quantity of stones or other materials thrown up by the sea, commonly called beach, where the removal of the same would cause any damage or injury by inundation to the lands adjoining, or increased danger of encroachment by the sea.

Proviso against materials from sea beach in certain cases.

53. It shall not be lawful for any surveyor, or any other person acting under the authority of this Act, to dig, gather, get, take, or carry away any materials for making or repairing any highway out of or from any inclosed land or ground, until one calendar month's notice in writing, signed by the surveyor, shall have been given to the owner of the premises from which such materials are intended to be taken, or to his known agent, and to the occupier of the premises from which such materials are intended to be taken, or left at the house or last or usual place of abode of such owner or agent, and also of such occupier, to appear before the justices at a special sessions for the highways, to show cause why such materials shall not be had therefrom; and in case such owner, agent, or occupier shall attend pursuant to such notice, but shall not show sufficient cause to the contrary, such justices shall, if they think proper, authorise such surveyor or other person to dig, get, gather, take, and carry away such materials at such time or cause as to such justices shall seem proper; and if such owner, agent, or

Notice to be given before materials are taken from private lands.

If the owner, &c., shows cause against

Appendix.

the removal, two justices shall decide thereon.

If sufficient materials cannot be found in waste lands, &c., surveyor may, with license of justices, take them from inclosed grounds or lands, making satisfaction to the owners.

occupier shall neglect or refuse to appear by himself or his agent, the said justices shall and may (upon proof on oath of the service of such notice) make such order therein as they shall think fit, as fully and effectually to all intents and purposes as if such owner or occupier, or his agent, had attended.

54. It shall be lawful for every such surveyor, for the use aforesaid, by license in writing from the justices at a special sessions for the highways, to search for, dig, and get materials, if sufficient cannot be had conveniently within such waste lands, common grounds, rivers or brooks, in or through any of the several or inclosed lands or grounds of any person whosoever (such lands or grounds not being a garden, yard, avenue to a house, lawn, park, paddock, or inclosed plantation, or inclosed wood not exceeding one hundred acres in extent) within the parish where the same shall be wanted, or within any other parish adjoining or lying near to the highway for which such materials shall be required, if it appear to such justices that sufficient materials cannot be conveniently had in the parish where such highways lie, or in the waste lands, or common grounds, rivers, or brooks, of such adjacent parish, and that a sufficient quantity of materials will be left for the use of the parish where the same shall be, and to take and carry away so much of the said materials as by the discretion of the said surveyor shall be thought necessary to be employed in the amendment of the said highways, the said surveyor making such satisfaction for the materials which may be got or taken away, and also for the damage done to such lands or grounds by the getting and carrying away the same, as shall be settled and ascertained by order of the justices at a special sessions for the highways.

These four sections, 51—54, which deal with the taking of materials for the repair of highways should be read together. The surveyor is given power to gather and dig for stones and gravel in waste lands in his parish, or if there are not sufficient in his own he may gather and dig for them in the waste lands of an adjoining parish. He may further gather stones lying on the surface of private land, except where it is of a strictly private nature, as garden, lawns, and such like as mentioned in section 54. That proviso extends to section 51. See *Arlesford Sanitary Authority v. Scott*, 7 Q. B. D. 219. In none of these cases is compensation given for the value of the materials removed, but it is given for the injury caused to the land by the removal.

Stones cannot be gathered from the lands of private owners unless the owner gives his consent, or after a month's notice has been given of the intention to take the same, and justices in petty sessions (generally special sessions) give their license. See form of license No. 55.

If materials cannot be got except by digging in private lands, then the justices may similarly give license for the materials to be got by digging in private lands. In such cases compensation is to be awarded alike for the value of the materials taken, and for the damage done by taking them. See the sections discussed in *Arlesford Sanitary Authority v. Scott*, 7 Q. B. D. 219. For form, see *infra*, No. 56.

The expression "inclosed ground," used in section 53, includes ground in the exclusive occupation of one or more persons for agricultural purposes, although not separated from the highway or adjoining land by any fence or inclosure. 4 & 5 Vict. c. 51.

The license should state the particular place from which the material is to be taken. Cf., *Rea v. Manning*, 1 Burr. 377. If the place from which the material is to be taken is not one of the strictly private places excepted in section 54, it does not matter whether the material has to be brought to the

highways through such a place, as, for example, if it has to be carted along an avenue. *Ramsden v. Yeates*, 44 L. T. 612. The license should not continue indefinitely, but should be limited to the particular occasion in respect of which it was granted. *Earl Manvers v. Bartholomew*, 4 Q. B. D. 5. The compensation is to be settled by justices, and this is the only manner in which it is to be determined (*Peters v. Clarkson*, 7 M. & G. 548), and it would appear that it should be assessed after the material has been removed, and not before. *Cf., Boyfield v. Porter*, 13 East, 200.

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Where a gravel pit had under an enclosure award been set aside for the surveyor of the highway to get gravel for the repair of the highway, it was held that this right passed to the county council on taking over the repair of such highway as a main road. *Norfolk County Council v. Bittering Highway Surveyor*, 58 J. P. 479.

As to taking gravel from commons which have been enclosed, see the Commons Act, 1876 (39 & 40 Vict. c. 56).

Holes made by the surveyor in waste lands, are by section 55 required to be filled up, levelled or sloped down, and while open they should be fenced off.

* * * * *

82. Provided always, that where it shall appear, upon the view of two justices of the peace, that any highway is not of sufficient breadth, and might be widened and enlarged, such justices shall, and they are hereby empowered, within their respective divisions, to order such highway respectively to be widened and enlarged in such manner as they shall think fit, so that the said highway, when widened and enlarged, shall not exceed thirty feet in breadth; and that neither of the said powers do extend to pull down any house or building, or to take away the ground of any garden, lawn, yard, court, park, paddock, planted walk, plantation, or any avenue to any house, or any inclosed ground set apart for a building ground, or as a nursery for trees; and for the satisfaction of the person, body politic or corporate, who is seised or possessed of or interested in their own right, or in trust for any other person in the said ground that shall be laid into the said highway respectively so to be widened and enlarged, the said surveyor, under the direction and with the approbation of the said justices in writing, shall and is hereby empowered to make an agreement with him for the recompense to be made for such ground, and for the making such new ditches and fences as shall be necessary, according and in proportion to their several and respective interests therein, and also with any other person, body politic or corporate, that may be injured by the widening and enlarging such highway, for the satisfaction to be made to him respectively as aforesaid; and if the said surveyor, under the direction and with the approbation of the said justices, cannot agree with the said person, body politic or corporate, or if he cannot be found, or shall refuse to treat or take such recompense or satisfaction as shall be offered to them respectively by such surveyor, then the justices of the peace at any general quarter sessions to be holden for the limit wherein such ground shall lie, upon certificate in writing signed by the justices making such view as aforesaid of their proceedings in the premises, and upon proof of fourteen days' notice in writing having been given by the surveyor of the parish to the owners, occupier, or other person, body politic or corporate, interested in such ground, or to his guardian, and if trustee, clerk, or agent, signifying an intention to apply to such quarter sessions for the purpose of taking such ground, shall impanel a jury of twelve disinterested men out of the persons returned to serve as jury-men at such quarter sessions; and the said jury shall upon their oaths, may be

Justices
may order
narrow
highways
to be
widened.

Surveyor
to agree
with
owners of
lands for
recom-
pense for
ground
required
for widen-
ing, &c.;
they can-
not agree,
the same

Appendx.

assessed
by a jury
at quarter
sessions.

On pay-
ment of
money
assessed,
ground to
be deemed
a public
highway.

to the best of their judgment, assess the damage to be given and recompense to be made to the owners and others interested as aforesaid in the said ground for their respective interests, as they shall think reasonable, not exceeding forty years' purchase for the clear yearly value of the ground so laid and let, and likewise such recompense as they shall think reasonable for the making of new ditches and fences on the side of the said highway that shall be so widened and enlarged, and also satisfaction to any person, body politic or corporate, that may be otherwise injured by the widening and enlarging the said highway respectively; and upon payment or tender of the money so to be awarded and assessed to the person, body politic or corporate, entitled to receive the same, or leaving it in the hands of the clerk of the peace of such limit; in case such person, body politic or corporate, cannot be found, or shall refuse to accept the same, for the use of the owner of or others interested in the said ground, the interest of the said person, body politic or corporate, in the said ground shall be for ever divested out of them, and the said ground, after such agreement or verdict as aforesaid, shall be esteemed and taken to be a public highway to all intents and purposes whatsoever; saving nevertheless to the owner of such ground all mines, minerals, and fossils lying under the same which can or may be got without breaking the surface of the said highway, and also all timber and wood growing upon such ground, to be felled and taken by such owner within one month after such order shall have been made, or in default thereof to be felled by the said surveyor within the respective months aforesaid, and laid upon the land adjoining, for the benefit of the said owner. . . .

The rest of the section deals with making a rate for this purpose.

The provisions of this Act have been made applicable to highways, which are or may be repaired under local and personal Acts, except roads belonging to railway and canal companies and conservators of rivers, by the Highway Act, 1862 (25 & 26 Vict. c. 61), s. 44.

The value of the different interests held in any land which may be taken should apparently be assessed separately, as under the Lands Clauses Act. See *Rex v. Trustees of the Norwich and Watton Road*, 5 A. & E. 543. The fact that notice has been given to the various persons interested should appear on the face of the proceedings, otherwise the order may be brought up as *certiorari* and quashed. S. C., *Rex v. Bagshaw*, 7 T. R. 363.

If the surface of the land is taken for the purpose of making highways under an Inclosure Act, and the mines are reserved to the lord of the manor, he will not be allowed to work the mines so as to injure the highways. See *fieldside Local Board v. Consett Iron Company*, L. R. 3 Ex. D. 54; and see as to support, the Public Health (Support of Sewers) Act, 1883, *ante*, p. 451. If mine owners lower the land without otherwise damaging the highway, an action appears to lie against them for nominal damages. *Attorney-General v. Conduit Colliery Company* [1895], 1 Q. B. 301.

The Highways and Locomotives (Amendment) Act, 1878, s. 27, permits the mine owner to mine as he might do if the road had not become vested in the authority, "but so nevertheless that in such working or getting no damage shall be done to the road or highway."

If property is injuriously affected by altering the level of a highway by an urban district council under this Act, the owner whose premises are so affected cannot claim compensation under section 808 of the Public Health Act, 1875. *Burgess v. Norwich Local Board*, 6 Q. B. D. 264; see *ante*, p. 520.

Costs of
proceed-

83. In case such jury shall give in and deliver a verdict for more moneys as a recompense for the right, interest, or property of any

person, body politic or corporate, in such lands or grounds, or for the making of such fence, or for such damage or injury to be sustained by him as aforesaid, than what shall have been proposed and offered by the said surveyor before such application to the said Court of quarter sessions as aforesaid, that then and in such case the costs and expenses attending the said several proceedings shall be borne and paid by the surveyor out of the moneys in his hand, or to be assessed and levied by virtue and under the powers of this Act; but if such jury shall give and deliver a verdict for no more or for less moneys than shall have been so offered and proposed by the said surveyor before such application to the said Court of quarter sessions as aforesaid, that then the said costs and expenses shall be borne and paid by the person, body politic or corporate, who shall have refused to accept the recompense and satisfaction so offered to him as aforesaid.

Appndx.
ings, by
whom payable.

NOTE.—The words omitted in the above sections unless otherwise stated are merely formal, and have been repealed by the Statute Law Revision Acts.

THE DEFENCE ACT, 1842.

5 & 6 VICT. CAP. 94.

An Act to consolidate and amend the laws relating to the services of the Ordnance Department and the vesting and purchase of lands and hereditaments for those services and for the defence and security of the realm.
[10th August, 1842.]

This Act, although considerably amended, still remains in force as regards the provisions enabling land to be taken compulsorily for the defence of the realm. The powers given by this Act and the various amending Acts were transferred from the Ordnance Board to the Secretary of State for War by the Ordnance Board Transfer Act, 1855 (18 & 19 Vict. c. 117). The Secretary of State for War has also powers of acquiring land under the Military Lands Act, 1892 (55 & 56 Vict. c. 43), *ante*, p. 654, and probably in ordinary cases the procedure will be under that Act.

The various Acts which amend and extend the provisions of this Act are:—

The Defence Act, 1854 (17 & 18 Vict. c. 67).

The Ordnance Board Transfer Act, 1855 (18 & 19 Vict. c. 117).

The Defence Act, 1859 (22 Vict. c. 12).

The Queen's Remembrancer Act, 1859 (22 & 23 Vict. c. 21).

The Lands Clauses Act, 1860 (23 & 24 Vict. c. 106), s. 7, *ante*, p. 442.

The Defence Act, 1860 (23 & 24 Vict. c. 112).

The Ranges Act, 1891 (54 & 55 Vict. c. 54), s. 11.

The principal provisions of these as affecting this subject will be found set out in the notes hereto.

The preamble to this Act which recited 44 Geo. 3, c. 95; 1 & 2 Geo. 4, c. 69; 3 Geo. 4, c. 108, and 2 & 3 Will. 4, c. 25, was repealed by the Statute Law Revision Act, 1888 (51 & 52 Vict. c. 57), and sections 1—4 of this Act, which dealt with the repeal of those Acts, were repealed by the Statute Law Revision Act, 1874 (37 & 38 Vict. c. 94).

Sections 5—8, vested lands held for the use of the Ordnance and late Barrack Department, and other lands held for military defences in the principal officers of Her Majesty's Ordnance, who were the persons also vested with the powers of purchasing and taking land under this Act. By the Ordnance Board Transfer Act, 1855 (18 & 19 Vict. c. 117), these lands and the powers mentioned in this Act, and the further powers as regards rights

Appendix. over commons contained in the Defence Act, 1854 (17 & 18 Vict. c. 117) (see *infra*, note to section 19), were transferred to and vested in the Secretary of State for War for the time being, who is to be described in all contracts, conveyances, &c., as "Her Majesty's Principal Secretary of State for the War Department."

The omissions in the sections herein set out are formal words which have been repealed by the Statute Law Revision Acts. For the principal officers of Her Majesty's Ordnance, throughout read the Secretary of State for War.

* * * * *

Principal officers may purchase lands, &c., and take leases on behalf of the Crown.

9. It shall be lawful for the said principal officers for the time being of Her Majesty's Ordnance(a) from time to time to contract for and purchase, for and on behalf of Her Majesty, . . . any messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments, or to take or purchase any lease of the same which shall in their judgment be desirable to be purchased, for or on behalf of the said ordnance or barrack services, or the defence of the realm, upon such terms as to the said principal officers shall seem meet, and to enter into any contracts necessary for that purpose ;

(a) Her Majesty's Principal Secretary of State for the War Department. As to the further powers of purchasing and taking lands, see note to section 19, *infra*.

By the Defence Act, 1859 (22 Vict. c. 12), as to conveyances of land, it is provided as follows :—

2. Conveyances of land in England and Ireland to be purchased by the said Secretary of State may be according to the form in the Schedule (A.) to this Act, or as near thereto as the circumstances of the case admit; and all conveyances so made shall be effectual to vest the land thereby conveyed in the said Secretary of State and his successors, and shall operate to bar and destroy all such estates tail, and other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever of and in the land comprised in such conveyances, as have been purchased or compensated for by the consideration given on the purchase; but this enactment shall not in anywise interfere with or affect section 8 of the said Act of the Fifth and Sixth years of Her Majesty.

SCHEDULE (A.).

Form of Conveyance.

I, , of , in consideration of the sum of paid to me by Her Majesty's Principal Secretary of State for the War Department, do hereby convey to the Secretary of State, and his successors, all the lands and hereditaments set forth in the Schedule hereto, together with the ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of or am by law empowered to convey, to hold the premises to the said Secretary of State, and his successors for ever on behalf of Her Majesty.

In witness whereof I have hereunto set my hand and seal the day of , in the year of our Lord.

Power given to bodies politic and others to treat.

10. It shall be lawful for all bodies politic or corporate, ecclesiastical or civil, and all feoffees or trustees for charitable or other public purposes, and for all tenants for life and tenants in tail, and for the husbands, guardians, trustees, committees, curators, or attorneys of such of the owners or proprietors of or persons interested in any messuages, buildings, castles, forts, lines, or other fortifications, manors,

lands, tenements, and hereditaments, which have been or may be hereafter agreed to be purchased or taken for the use of the said Ordnance Department, as shall be *femes covert*, infants, lunatics, idiots, or persons beyond the seas, or otherwise incapable of acting for themselves, to contract or agree with the said principal officers for the time being, either for the absolute sale or exchange of any such messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments, or sale of any reversion after any estate or estates for lives or years, or for the grant of any lease either for life or lives, or for any term of years certain, therein, or for such period as the exigency of the public service shall require, and to convey, surrender, demise, or grant the same accordingly; and all contracts, sales, conveyances, enfranchisements, surrenders, leases, and agreements which shall be made in pursuance hereof shall be valid and effectual in law to all intents and purposes whatsoever, and shall be a complete bar to all dower and claims of dower, estates tail and other estates, rights, trusts, and interests whatsoever.

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The powers given to limited owners to sell in the Lands Clauses Acts are, apparently, extended to this Act, by the Lands Clauses Act, 1860, s. 7, *ante*, p. 442.

Section 11 has been repealed by the Statute Law Revision Act, 1874.

Sections 12—14 enable the Secretary for War to sell, exchange, let, or demise any of the hereditaments vested in him.

* * * * *

15. Provided always, that in case any person or persons shall have any just and legal or equitable right to any of the messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, and hereditaments, which shall be so sold, exchanged, and conveyed as aforesaid, (a) or to any part or parts thereof, or to any charge, incumbrance, or demand affecting the same, and not being under any of the disabilities hereinafter mentioned, and shall, within five years next after such right shall by law or equity accrue to or become vested in him, her, or them respectively, or being *femes covert* (except *femes covert* whose estates have been or may be sold under the authority of this or any other Act for that purpose), persons within the age of twenty-one years, or out of the realm, or not of whole mind, at the time of such sale, exchange, and conveyance as aforesaid, shall, within five years next after they shall respectively come and be discovered, at their full age of twenty-one years, out of prison, within this land, or of whole mind, make out and establish such right or claim to the satisfaction of the said principal officers, then and in such case the principal officers shall make or cause to be made a fair and reasonable compensation or satisfaction for every such right and claim so made out and established as aforesaid; but such compensation or satisfaction shall not in any case exceed the amount of the purchase-money or purchase-moneys which shall have been paid to and received by the said principal officers for the messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, and hereditaments, in respect whereof such right or claim shall be so made out as aforesaid, or a proportional part thereof, exclusive of the value of any buildings or improvements which shall have been erected or made thereon for the use of the said Ordnance and Barrack Departments, or for the defence of the realm.

Compensation to be made where equitable rights are established;

but not to exceed the purchase money received by such principal officers.

(a) That is sold by the Secretary of State as provided in sections 12—14.

Appendix.

Principal officers may authorise persons to survey and mark out lands, and treat with owners for the absolute purchase thereof.

When footpaths, &c., are stopped up, other paths to be made in lieu thereof.

Bodies politic may agree for the sale of lands, &c.

In default of treating or where the parties do not agree, the persons authorised by Her Majesty may require two justices, &c., to put Her Majesty's officers in possession.

16. It shall be lawful for the principal officers of Her Majesty's Ordnance for the time being to enter on, survey, and mark out, or to cause to be surveyed or marked out, any lands, buildings, or other hereditaments or easements wanted for the service of the Ordnance Department, or for the defence of the realm, or to stop up or divert any public or private footpaths or bridle-roads, and to treat and agree with the owner or owners of such lands, buildings, hereditaments, or with any person or persons interested therein, either for the absolute purchase thereof, or for the possession or use thereof during such time as the exigence of the public service shall require.

This land here mentioned cannot be taken compulsorily unless the necessity or expediency is certified as mentioned in section 23, *infra*, or unless the enemy have actually invaded the United Kingdom.

17. Provided always, that whenever any footpath or bridle road shall be stopped up as aforesaid, another path or road shall be provided and made in lieu thereof respectively, at the expense of the Ordnance Department, and at such convenient distance therefrom as to the principal officers of Her Majesty's Ordnance for the time being shall seem proper and necessary.

18. It shall be lawful for all bodies politic or corporate, ecclesiastical or civil, and all feoffees or trustees for charitable or other public purposes, and for all tenants for life and tenants in tail, and for the husbands, guardians, trustees, committees, curators, or attornies of such of the owners or proprietors or of persons interested in any such lands, buildings, or other hereditaments so surveyed and marked out as shall be *femes covert*, infants, lunatics, idiots, or persons beyond the seas, or otherwise incapable of acting for themselves, to contract and agree with such principal officers, either for the absolute sale of such lands, buildings, or other hereditaments, or for the grant of any lease, either for any term of years certain therein, or for such period as the exigence of the public service shall require, and to convey, surrender, demise, or grant the same to such principal officers, in trust for Her Majesty, her heirs and successors, accordingly; and all such contracts, sales, conveyances, surrenders, leases, and agreements shall be valid and effectual in law to all intents and purposes whatsoever.

19. In case any such bodies or other persons hereby authorised to contract on behalf of themselves or others as aforesaid, or any other person or persons interested in any such lands, buildings, or other hereditaments which shall be so marked out and surveyed as aforesaid, shall for the space of fourteen days next after notice in writing subscribed by or on behalf of the said principal officers shall have been given to the chief officer or officers of any such body, or to such other persons hereby authorised to contract on behalf of others, or interested themselves, as aforesaid, or left at his, her, or their usual place of abode, refuse or decline to treat or agree, or by reason of absence shall be prevented from treating or agreeing with the said principal officers, or shall refuse to accept such sum of money as shall be offered by the said principal officers as the consideration for the absolute purchase of such lands, buildings, or other hereditaments, or such annual rent or sum as shall be offered for the hire thereof, either for a time certain or for such period as the exigence of the public service may require, then and in such case it shall be lawful for the said principal officers to require two

or more justices of the peace, or three or more deputy lieutenants (one of whom shall be a justice of the peace), or two or more deputy governors for the county, riding, stewartry, city, or place where such lands, buildings, or other hereditaments shall be, to put the said principal officers, or any person appointed by them, into immediate possession of such lands, buildings, or other hereditaments, which such justices or deputy lieutenants or deputy governors are hereby required to do, and shall for that purpose issue their warrants under their hands and seals commanding possession to be so delivered, and shall also issue their warrants to the sheriff of the county, riding, stewartry, city, or place wherein such lands, buildings, or hereditaments shall be situate, to summon a jury; and every such sheriff is hereby authorised and required to summon and return a jury, properly qualified, of the number of twenty-four, and in the manner required by the laws of *England, Ireland, and Scotland* respectively, who shall meet at some convenient time and place to be mentioned in such summons, out of whom a jury of twelve shall be drawn, in such manner as juries for the trial of issues joined in Her Majesty's Courts at *Westminster* and *Dublin* are drawn by law in *England* and *Ireland* respectively, and in such manner as juries are drawn by law for any trial in *Scotland*; and in case a sufficient number shall not appear, the said sheriff shall choose others of the by-standers, or that can speedily be procured, being qualified as aforesaid; and the said jurymen may be challenged by the parties on either side, but not the array; and the said justices, deputy lieutenants, or governors respectively may summon witnesses, and adjourn any such meeting if jurymen or witnesses do not attend; and the jury on hearing any witnesses and evidence that may be produced, shall on their oaths (which oaths, as also the oaths of such witnesses, the said justices, deputy lieutenants, or governors respectively are hereby empowered and required to administer,) find the compensation to be paid, either for the absolute purchase of such lands, buildings, or other hereditaments, or for the possession or use thereof, as the case may be: Provided always, that it shall not be lawful for the said principal officers to use any lands, buildings, or hereditaments taken under the compulsory process aforesaid for the barrack service, or to erect any barrack buildings thereon.

Appendx.

Jury to be summoned to value the premises.

The power to take land under this section is limited by the proviso in section 23, *infra*.

The powers given by this section of taking land have been very considerably amended and enlarged. By section 7 of the Lands Clauses Act, 1860, s. 7, *ante*, p. 442, the powers of the Lands Clauses Acts are to be taken as herein contained. The Defence Act, 1854 (17 & 18 Vict. c. 67), extended the powers under these Acts to the extinction of rights of common as follows:—

THE DEFENCE ACT, 1854.

1. It shall be lawful for the principal officers for the time being of Her Majesty's Ordnance (if they shall think proper so to do) to use and avail themselves of all the powers and provisions contained in the Lands Clauses Consolidation Act, 1845, for the purpose of ascertaining, making, and paying compensation for and extinguishing all rights of common, commonable, and other rights in, over, or affecting any lands the soil of which has at any time been or shall hereafter be purchased or taken by the said principal officers, under the Act of the Fifth and Sixth *Victoria*, chapter ninety-four, and for such purpose the principal officers for the time being of Her Majesty's

Principal officers of ordnance may avail themselves of certain powers contained in 8 & 9

Appendx. Ordinance shall be deemed and taken to be promoters of an undertaking within the meaning of the said Lands Clauses Consolidation Act, 1845, and all the powers and provisions of the last-mentioned Act may, if necessary, be treated as if they had been contained in the said Act of the Fifth and Sixth Victoria, chapter ninety-four, for the purpose of being used or made available by the said principal officers for the time being: Provided always, that nothing herein contained shall prejudice or affect the powers and authorities of the principal officers of Her Majesty's Ordinance for the time being under the last-mentioned statute.

Power of valuer appointed under Inclosure Act to cease on purchase of common rights by ordinance. 2. And in case the said principal officers of Her Majesty's Board of Ordinance shall have purchased or shall hereafter purchase any land, and the common, commonable, and other rights in and over the same, and a valuer shall have been appointed in the matter of any inclosure proceeding in respect of such lands under the provisions of "The Acts for the Inclosure, Exchange, and Improvement of Land," the duties and powers of such valuer in relation to the land so purchased shall, upon payment of the purchase money for such common, commonable, and other rights over the same, cease and determine, and the Inclosure Commissioners for *England* and *Wales* shall, by an order under their seal, award such amount of compensation to such valuer as they shall deem just to be paid by the said principal officers, and such valuer shall be bound to accept the same as a full compensation for his services in the matter of the said inclosure, so far as respects the land, and common, commonable, and other rights so purchased.

Purchase may be made although inclosure proceedings pending. 3. Any purchase of the soil of any lands, or of any common, commonable, or other rights in or over the same, which shall be made under the provisions of any Act of Parliament, shall be valid in law to all intents and purposes, although at the time of such purchase proceedings for an inclosure of such lands were or shall be proceeding.

The provisions of this Act were extended to other lands by section 1 of the Defence Act, 1859, but that section has been repealed by the Military Lands Act, 1892.

THE DEFENCE ACT, 1859.

By the Defence Act, 1859 (22 Vict. c. 12), s. 4, it is provided as follows:—

4. The proviso at the end of section 19 of the said Act of the Fifth and Sixth years of Her Majesty shall not extend to prevent the erection of barracks on any lands taken as therein mentioned, and being within any fortress or garrison town or appurtenant to any fortification, or to prevent any buildings on any such lands being used as barracks.

As to taking lands for barracks, see the Military Lands Act, 1892, *ante*, p. 654.

THE DEFENCE ACT, 1860.

By the Defence Act, 1860 (23 & 24 Vict. c. 112), which was an Act authorising the taking of land for and the construction of specific works, it was enacted by section 46 as follows:—

Amendment of the Defence Act, 1842.

5 & 6 Vict.
c. 94
amended
as herein
stated.

46. And whereas The Defence Act, 1842, has been amended by divers Acts, and it is expedient further to amend the same:

The following provisions of this Act in relation to lands to be taken under

this Act shall be applicable where lands are surveyed and marked out under **Appndx.**
The Defence Act, 1842, as amended as aforesaid ; (that is to say,)

The provisions concerning the mode of serving notices on owners, leasees, and occupiers, and of notices, writs, or other documents on the said Secretary of State :

The provisions concerning the determination of the amount of compensation for lands otherwise than by agreement :

The provisions concerning the payment and application of compensation, and the disposition of securities on which the same may be invested, and of the interest and dividends of such compensation and securities :

And the provision concerning interests omitted to be purchased, which last-mentioned provision shall apply as well with respect to lands already taken by the said Secretary of State as with respect to lands to be hereafter taken by him under the said Defence Act as amended as aforesaid.

These provisions would appear to be—as to service, sections 9 and 45 ; as to determining compensation, sections 12—19 ; as to payment and application of compensation, 19—23 ; and as to omitted interests, sections 36—38.

Service of Notice on Owners.

9. Every such notice shall be served personally on the said parties, or left at their last usual places of abode, if any such can after diligent inquiry be found, and in case any of such parties be absent from the United Kingdom, or cannot be found after diligent inquiry, shall be addressed to such party and left with the occupier of the lands, or, if there be no such occupier, affixed upon some conspicuous part of such lands : Now notices to be given.

If any of such parties be a corporation aggregate such notice shall be left at the principal office of such corporation, or, if no such office can after diligent inquiry be found, such notice shall be served on some principal member, if any, of such corporation, and a duplicate of the notice shall be addressed to such corporation and left with the occupier of the lands, or, if there be no such occupier, affixed upon some conspicuous part of such lands.

Service on Secretary of State.

45. Any notice, summons, writ, or other document required to be served on the said Secretary of State may be served by being delivered to the Solicitor for the War Department for the time being, or by being left for him thereat ; and any notice, summons, writ, or other document required to be given by or on behalf of the said Secretary of State shall be given under the hand of such solicitor. Notices, &c., required to be served on or given by Secretary of State to be served on or given by the solicitor.

Determination of Amount of Compensation otherwise than by Agreement.

12. If for fourteen days after the service of any such notice as aforesaid any party on whom the same is served fail to state the particulars of his claim in respect of any lands to which such notice relates, or to treat with the said Secretary of State as to the amount of compensation to be paid to such party or which he is empowered to agree upon, How compensation to be settled in case of neglect to treat.

Or if the said Secretary of State and such party do not within such fourteen days agree as to the amount of such compensation,

Such amount shall be settled by a jury in like manner as if the same were compensation for lands surveyed and marked out under the Act of the session holden in the Fifth and Sixth years of Her Majesty, chapter ninety-four, hereinafter referred to as "The Defence Act, 1842," as amended by the Act of the session holden in the eighteenth and nineteenth years of Her Majesty, chapter one hundred and seventeen.

13. Provided always, That if the compensation claimed do not exceed two hundred pounds, the same shall be settled by two justices, in manner following ; Provision where compensation

Appendix.

claimed
is under
200*l*.

Compensation to
absent
parties to
be settled
by a surveyor to
be appointed by
two justices.

Surveyor acting
corruptly to
be guilty of a
misdemeanor.

Valuation to be
preserved
and produced
on demand.
Damage may be
ascertained
when works
done.

In estimating
damage from
works re-

gard to be
had to advantages
derived.

Where any
agreement in
restraint of
building
exists, regard to be
had thereto
in estimating
compensation.
Provision
as to

that is to say, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before two justices at a time and place to be named in the summons, and upon the appearance of the parties, or, in the absence of either of them, upon proof of due service of the summons, it shall be lawful for such justices to determine such amount, and for that purpose to examine the claimant and the witnesses of the parties upon oath.

14. Where by reason of absence from the United Kingdom any party is prevented from treating, or cannot after diligent inquiry be found, the amount of such compensation shall be determined by valuation in manner following; that is to say, the said Secretary of State shall make application to two justices, and upon proof satisfactory to them that any such party is by reason of absence from the kingdom prevented from treating, or cannot after diligent inquiry be found, such justices shall, by writing under their hands, nominate a competent surveyor for determining the amount of such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

15. If any surveyor wilfully and corruptly make any incorrect or false valuation, or wilfully and corruptly act in the matter hereof, he shall be guilty of a misdemeanor.

16. The said nomination shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the said Secretary of State, who shall at all times produce the said valuation and other documents, on demand, to all parties interested in the lands comprised therein.

17. Where any damage has been sustained by reason of any works authorised by this Act in or upon lands required to be kept free from buildings and other obstructions, in respect of which works compensation has not been agreed upon, awarded, or otherwise ascertained prospectively, compensation shall be paid in respect thereof when the works have been done, such compensation to be determined in like manner as other compensation under this Act, or as near thereto as circumstances admit.

18. In determining the amount of compensation in respect of damage sustained by reason of any such works regard shall be had to any increase in the extent of land capable of being brought under cultivation by removal of banks, fences, hedges, and ditches, and to any improved drainage and other advantages derived from any such works.

19. Where any covenant or agreement has been entered into with the principal officers of Her Majesty's Ordnance or with the said Secretary of State in restraint of the right to build on any lands, and such covenant or agreement is legally or equitably binding on the owner of the lands, regard shall be had in ascertaining the amount of compensation to be paid under this Act for or in respect of such lands (whether the same are required to be taken absolutely or are required to be kept free from buildings) to the existing restriction arising out of such covenant or agreement.

The sections as to the payment and application of compensation will be found in the note to section 25, *infra*.

Subsequent Compensation for Interests omitted to be purchased.

36. If at any time after the said Secretary of State has entered upon any lands vested in him under this Act, any party appear to be entitled to any estate, right, or interest in or charge affecting such lands which through mistake and inadvertence has been omitted to be purchased or compensated for, the said Secretary of State shall nevertheless remain in the undisturbed possession

sion of such lands, and shall be deemed to have an indefeasible title thereto, but shall pay compensation for any such estate, right, interest, or charge, which but for this enactment might be recovered or enforced, and also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued, to such parties respectively in respect thereof during the interval between the entry of the said Secretary of State thereon and the time of the payment of such compensation by the said Secretary of State so far as such mesne profits or interest may be recoverable at law or in equity : Appndx.

Such compensation shall be agreed on or awarded and paid in like manner as the same would have been agreed on or awarded and paid in case the said Secretary of State had purchased or compensated, for such estate, right, interest, or charge before his entering upon such lands, or as near thereto as circumstances will admit.

37. In estimating the compensation to be given for any such estate, right, interest, or charge affecting any lands, or for any mesne profits or interest, the jury or justices, as the case may be, shall assess the same according to the value of the lands at the time the same were entered upon by the said Secretary of State and without regard to any improvements or works made by him. How value of such

38. In addition to the said compensation, the said Secretary of State shall, when the right to any such estate, right, interest, or charge has been disputed by him and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof has taken place, and such costs and expenses shall, in case the same be disputed, be settled by the proper officer of the Court in which such litigation took place. Secretary of State to pay the full costs of litigation as to such lands.

THE RANGES ACT, 1891.

11. (1.) Where any land is acquired, either under the Defence Act, 1842, and the Acts amending the same, or for military purposes under any Act with which the Lands Clauses Acts are incorporated, the person or authority acquiring the land may require that the compensation to be paid for the land be settled by arbitration and not by reference to a jury, and thereupon the provisions of the Lands Clauses Acts with reference to arbitration shall, if not already applicable, apply for the purpose of settling the compensation.

(2.) Section 4 of the Barracks Act, 1890, is hereby repealed.

The whole of this Act with the exception of the above section was repealed by the Military Lands Act, 1892.

20. Provided always, that if the said principal officers, or any person interested in the lands, buildings, or other hereditaments so marked out and surveyed, shall be dissatisfied with the verdict of any such jury, it shall be lawful for them, or their attorneys, in *England* and *Ireland*, to apply to the Court of Exchequer at *Westminster* or *Dublin* respectively in the term next, and in *Scotland* to apply within fourteen days after the finding any such verdict to the Court of Session in *Scotland* in time of session, or lord ordinary on the bills in time of vacation, and to suggest to the said Courts or lord ordinary respectively that they have reason to be dissatisfied with such verdict, and forthwith give notice thereof to the said principal officers on the one part, or to the party so interested as aforesaid on the other part (as the case may be); and thereupon, in *England* and *Ireland*, the proceedings that shall have been had and the verdict of such jury shall be returned into the said Courts Appeal may be made to the Court of Exchequer, &c., if either party is dissatisfied with the verdict of the jury.

Appendx. of Exchequer respectively, and if it shall appear to the said Courts to be proper, such suggestion shall be entered on such proceedings as aforesaid, and a writ shall thereupon, by rule of such Court, or order of any judge of such Court, be directed to the sheriff of the county where such lands, buildings, or other hereditaments shall lie, or, if the same shall lie in two counties, to the sheriff of either of such counties, to summon either a common or special jury, according to the application that shall have been made in that behalf, and as the Court and as such judge shall allow, and who shall respectively be qualified, according to law, to appear before the said justice or justices of assize of nisi prius of that county at the next assizes or sittings of nisi prius, if the same shall not happen sooner than twenty-one days after such suggestion, otherwise at the next succeeding assizes or sittings, and the compensation to be paid either for the absolute purchase or for the possession or use of such lands, buildings, or other hereditaments (as the case shall be) shall at such assizes or sittings be ascertained by such jury, in like manner as any damages may be inquired of upon any inquisition or inquiry of damages by any jury before any judge of assize or nisi prius, and the verdict of such jury shall be returned to the said Court of Exchequer, and shall be final and conclusive; and in *Scotland*, if it shall appear proper to the said Court of session or lord ordinary, upon such application, so to do, the said Court or lord ordinary shall order and direct the sheriff of the county where such lands, buildings, or other hereditaments shall lie, or if the same shall lie in two counties, to the sheriff of either of such counties, to summon another jury in the manner in which juries are summoned in *Scotland*, properly qualified according to law, to appear before the lords or lord of justiciary at the next circuit, if the same shall not happen sooner than twenty-one days after such application, otherwise at the next succeeding circuit, and the compensation as aforesaid for the lands, buildings, or other hereditaments (as the case shall be) shall at such circuit be ascertained by a jury drawn from the jury summoned as aforesaid in such manner as juries are drawn in *Scotland*, under the direction of the said lords or lord of justiciary aforesaid, and the verdict of such last-mentioned jury shall be final and conclusive, without being subject to review or challenge of any kind: Provided always, that it shall be lawful for the Court that shall have allowed such inquiry, on any application made within four days after the commencement of the succeeding term, or session if in *Scotland*, to order any new trial in relation thereto.

Jury may ascertain the proportion to be paid out of compensation for land to lessees, &c.

21. Provided always, that it shall be lawful for any jury impannelled before any justice of the peace or magistrate, or deputy lieutenant or deputy governor, or before any judge of assize or nisi prius, to ascertain the compensation to be paid for any lands, buildings, or other hereditaments under this Act, and they are hereby required to ascertain and settle the proportion to be paid out of such compensation to any persons having any interest as lessees or tenants at will, or otherwise, in any such lands, buildings, or other hereditaments, and the proportion to be paid out of such compensation shall be returned on the verdict: Provided also, that where any such inquiry before any judge of assize or nisi prius shall be had on the application of any such lessee or tenant at will, or other person having any inferior interest in any such lands, buildings, or other hereditaments, who may have been dissatisfied with the proportion of compensation settled by the jury to be paid in respect of such interest, it shall not be lawful for the jury

in any such case to alter the amount of the entire compensation awarded by any former verdict to be paid for such lands, buildings, or other hereditaments, but only the proportion thereof to be paid to the person or persons having separate interests therein; and it shall not be lawful for any jury on any such inquiry as aforesaid had before any judge of assize or nisi prius, as to any such compensation, on the application of any such officer as aforesaid, in any case in which the whole compensation awarded by them shall be the same as the whole compensation awarded by the former jury, to alter the proportion that shall have been settled by any such former jury, as to any separate interests in any such lands, buildings, or other hereditaments.

Appndx.

22. Provided also, that it shall be lawful for the Court or judge or lord ordinary making any such rule or order to require that that party on whose application the same shall be made shall give such security as shall to such Court, judge, or lord ordinary seem proper, for payment of costs, under such circumstances as shall be specified in any rule or order made for that purpose.

23. Provided always, that no such lands, buildings, or other hereditaments shall be so taken without the consent of the owner or owners thereof, or of any such person or persons as aforesaid, acting for or on the behalf of the owner or owners thereof, unless the necessity or expediency of taking the same shall be first certified by the lord lieutenant, or two of the deputy lieutenants, or by the governor or two deputy governors of the county, riding, stewartry, city, or place in which such lands, buildings, or other hereditaments lie, and unless the taking of such lands, buildings, or other hereditaments be authorised by a warrant under the hand or hands of the Lord High Treasurer, or of the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, for the time being, or any three or more of them, or unless the enemy shall have actually invaded the United Kingdom at the time when such lands, buildings, or other hereditaments shall be so taken.

24. In all cases where any lands, buildings, or other hereditaments shall have been taken under the provisions of the said recited Act of the forty-fourth year of the reign of His Majesty King George the Third, or shall be taken under the provisions of this Act, for any term of years, or for such period only as the exigencies of the public service shall require, it shall be lawful for the said principal officers, notwithstanding anything hereinbefore contained, or any other law to the contrary thereof notwithstanding, at any time before the possession thereof shall be delivered up to the owner or owners thereof, or other person or persons acting on his, her, or their behalf, to take down and remove all such buildings or other erections which shall or may have been built or erected thereon for the public service, after the same was or were so taken as aforesaid, and to carry away the materials thereof, making such compensation to the owner or owners of such lands, buildings, or other hereditaments, or other person or persons acting on his, her, or their behalf, for the damage or injury which may have been done thereto or to the soil thereof, by the erection of any such buildings, or otherwise, in consequence of the same having been occupied for the public service, as the said principal officers shall think reasonable, and as shall be agreed upon in that behalf; and if such owner or owners, or

Erections on lands taken for a temporary purpose to be removed before the lands are restored to the owner, and compensation shall be made for the injury done.

Appendix. other person or persons acting on his, her, or their behalf, shall not be willing to accept the compensation so offered, it shall be lawful for the said principal officers to apply to and require two justices of the peace of the county, riding, stewartry, city, or place to settle and ascertain the compensation which ought to be made for such damages or injury as aforesaid, and such justices shall settle and ascertain the same accordingly, and shall grant a certificate thereof; and the amount of such compensation, so settled and ascertained and certified, shall forthwith be paid by the treasurer, accountant, or other proper officer for the time being of the office or department for the use of which such lands, buildings, or other hereditaments shall have been taken, to the person or persons entitled thereto: Provided always, that nothing in this Act contained shall extend or be construed to extend to alter, prejudice, or affect any agreement which hath been or shall or may be entered into by the said principal officers with any owner or owners of any such lands, buildings, or other hereditaments, or other person or persons acting on his, her, or their behalf, in relation to any such buildings or erections, but every such agreement shall remain valid and effectual in like manner as if this Act had not been passed.

Act not to affect any agreement between the parties.

Purchase money payable to bodies politic, &c., how to be invested. 25. Where any money shall have been or shall be agreed, or shall have been or shall be required by the verdict of any jury, to be paid or given by the said principal officers, for the absolute purchase or exchange of any messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, grounds, tenements, or hereditaments, or of any reversion, as aforesaid, or of the enfranchisement of any copyhold or purchase of any other interest belonging to any such body, or other person or persons under any disability or incapacity, or not having the absolute interest therein, the said money, if the same shall amount to or exceed the sum of two hundred pounds, shall be paid into the hands or in the name of the remembrancer or other proper officer of Her Majesty's Court of Exchequer at *Westminster* or *Dublin*, or the Queen's remembrancer or other proper officer of the said Court at *Edinburgh*, respectively, for the time being, for the use and benefit of the owners and proprietors of such messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments, and such remembrancer, Queen's remembrancer, or other proper officer respectively is hereby authorised and required to receive or accept and to give a discharge for the same, and upon the acceptance or receipt thereof to sign a certificate to the barons or judges of the said Court of Exchequer under his hands, purporting and signifying that such money or other consideration was received or accepted by and paid to him in pursuance of this Act, for the use and benefit of such owners or proprietors as shall be named in such certificate; and the said certificate shall be filed or deposited in the said Court of Exchequer at *Westminster*, *Dublin*, or *Edinburgh* respectively, and a true copy thereof, signed by the said remembrancer, Queen's remembrancer, or other proper officer respectively of such Court, shall and may be read and allowed as evidence for the purposes hereinafter mentioned; and the said remembrancer, Queen's remembrancer, or other proper officer respectively is hereby required, upon receipt of any such sum or sums of money as aforesaid, to pay the same into the Bank of *England*, or Bank of *Ireland*, or Bank of *Scotland*, or Royal Bank of *Scotland*, as the case may require, and immediately upon the filing or depositing of such certificate the said messuages,

buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments, shall be and become vested in the said principal officers of the ordnance for the time being, for the service of the said Ordnance Department, or for the defence of the realm, in trust for Her Majesty, her heirs and successors. **Appendx.**

Sections 25—30. By the Queen's Remembrancer Act, 1859 (22 & 23 Viet. c. 21), s. 8, it is provided that moneys to be paid to the Queen's remembrancer shall be paid into the Bank of England with the privy of the Accountant-General of the Court of Chancery, and the Court of Chancery was to have the same powers as the Barons of Exchequer in relation thereto. The Paymaster-General of the Supreme Court of Judicature now takes the place of the Accountant-General and the procedure as to payment in will be as stated in the notes to section 69 of the Lands Clauses Act, 1845, *ante*, p. 146, and upon applications for investment in the notes to sections 70 and 80 of that Act, *ante*, pp. 165 and 193.

These sections have been further amended by provisions of the Defence Act, 1860, which by section 46 are to be incorporated in this Act. See *ante*, note to section 19.

Section 20 of the Defence Act, 1860, provides that compensation under that Defence Act shall be paid and applied as in sections 25 to 30 of this Act amended as Act, 1860. above, the following further provisions being made :—

21. Where any compensation is required to be paid into the Bank of England or Ireland under this Act, there shall be added thereto a sum of thirty pounds as an equivalent for the expenses consequent upon such payment, and upon such compensation, with such additional sum (which shall be deemed part of such compensation), being so paid, the said Secretary of State shall be discharged from all liability in respect thereof, and the Court of Chancery may allot to any tenant for life or for any other partial or qualified estate in respect of any expenses of investment incurred by him any portion of any such compensation which the Court may deem just.

22. The said Secretary of State may in any case at or after the expiration of three months from the time at which the compensation for any lands has been agreed upon or otherwise ascertained, if the owner thereof have not in the meantime made out a title thereto to the satisfaction of the said Secretary of State, pay such compensation, without such addition as aforesaid, into the Bank of England or Ireland, in manner hereinbefore referred to, and such payment shall discharge the said Secretary of State from all liability in respect of the money so paid :

Provided always, that the Court of Chancery may, upon application for payment of such money to the party entitled, in case the Court be of opinion that there was no unreasonable delay in deducing the title, or that a good title was shown, order all or any costs occasioned by such payment into Court to be paid by the said Secretary of State.

23. All orders and directions in relation to any money paid into the Bank of England in the name and with the privy of the Accountant-General of the Court of Chancery under this Act, or the securities in or upon which the same may be invested, or the dividends or interest on such money and securities, which under the said Acts the Court of Chancery is empowered to make or give, on motion or petition, may be made or given by the Master of the Rolls, or any of the Vice-chancellors while sitting at chambers, upon summons, in like manner as in other cases in which proceedings may be so had before the Master of the Rolls and Vice-Chancellor, subject, nevertheless, to any general rules and orders which may hereafter be made concerning the practice, proceedings, or business of the said Court.

Appndx.

Under section 23 it has been decided that applications for investment ought to be made by summons in chambers. *Re Maynard's Trusts*, 30 L. J. Ch. 344. This is now the general practice, see Order 55, r. 2, set out in the notes to section 70 of the Lands Clauses Act, 1845, *ante*, p. 169.

In applications for payment out of Court of the money, the Secretary of State need not be served, and it would appear that he need not be served upon any application in respect of the money in Court, as by section 21 of the Defence Act, 1860, he is discharged from all liability. *Ex parte Mosshead*, 33 Beav. 254.

In the same case it was held that persons having contingent charges need not be served, and as to service generally, see notes to section 80 of the Lands Clauses Act, 1845, *ante*, p. 205.

Barons,
&c., of
Exchequer
to make
order for
the invest-
ment of
such pur-
chase
money.

26. The barons or judges of Her Majesty's Court of Exchequer at Westminster, Dublin, or Edinburgh, of the degree of the coil, for the time being, or any one or more of them, shall be and they or he are or is hereby authorised and empowered in a summary way, upon motion or petition for or on behalf of any person or persons interested in or entitled to the benefit of the money so paid to and received by the said Queen's remembrancer or other proper officer respectively, or the interest or produce thereof, and upon reading the certificate directed to be signed by the said remembrancer, Queen's remembrancer, or other proper officer respectively concerning the same as aforesaid, and receiving such further satisfaction as they or he shall think necessary, to make and pronounce such orders and directions for paying the said money or any part of the same, or for placing out such part thereof as shall be principal in the public funds, or upon government or real securities, and for payment of the dividends or interest thereof, or any part thereof, to the respective persons entitled to receive the same, or for laying out the principal or any part thereof in the purchase of other lands or hereditaments, to be conveyed and settled to, for, and upon the same uses, trusts, intents, or purposes as the said messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments, so purchased or taken, stood settled at the time of the payment of such money as aforesaid, or as near thereto as the same can be done, or otherwise concerning the disposition of the said money or any part thereof, and the interest of the same, or any part thereof, for the benefit of the person and persons entitled to and interested in the same respectively, or for appointing any person or persons to be a trustee or trustees for all or any of such purposes, as the said Court shall think just and reasonable.

Where a pond had been taken under the Defence Act, 1842, and the water which flowed from it diverted, so that an ancient flour mill which was driven by the water was stopped, the compensation awarded was allowed to be retained by the tenant for life, as previous to the award he had laid out a larger sum in erecting a steam engine and suitable machinery for working the mill, with the necessary buildings, the Court considering this an investment in land. *In re Duke of Wellington's Settled Estates Act*, 30 L. J. Ch. 187. As to the application of moneys in the case of tenant for life under the Settled Land Act, see the notes to section 69 of the Lands Clauses Act, 1845, *ante*, p. 155.

Invest-
ment of
purchase
money
when less
than 200*l.*

27. Provided always, that in case such purchase money as is lastly hereinbefore mentioned shall be less than the sum of two hundred pounds, and shall exceed the sum of twenty pounds, then and in all such cases the same shall, at the option of the person or persons for the time being entitled to the rents and profits of the messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, ten-

ments, or hereditaments, so purchased, or of his, her, or their guardian **Appndx.**
 or guardians, committee or committees, in case of infancy or lunacy, to be signified in writing under their respective hands, be paid into the hands of the said remembrancer, Queen's remembrancer or other public officer respectively of the said Court of Exchequer, in order to be applied in manner hereinbefore directed; or otherwise the same shall be paid, at the like option, to three trustees, to be nominated by the person or persons making such option, and approved of by the said principal officers, or any three or more of them, such nomination or approbation to be signified in writing under the hands of the nominating and approving parties, in order that such principal money may be invested in the purchase of stock in the public funds, and that such stock, when purchased, and the dividends arising therefrom may be applied in manner hereinbefore directed, so far as the case be applicable, without obtaining or being required to obtain the order, direction, or approbation of the said Court of Exchequer.

28. Provided always, that in case such purchase money shall be less than twenty pounds, then and in all such cases the same shall be applied to the use of the person or persons who would for the time being be entitled to the rents and profits of the messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, and hereditaments, so purchased, in such manner as the said principal officers, or any three or more of them, shall think fit, or in case of infancy or lunacy, then to his, her, or their guardian or guardians, committee or committees, for the use and benefit of such person or persons entitled respectively. **Investment of purchase money when less than 20l.**

29. Upon the death or removal of any such remembrancer, Queen's remembrancer, or other proper officer respectively, all stock and securities vested in him by virtue of this Act shall vest in the succeeding remembrancer, Queen's remembrancer, or other proper officer respectively, for the purpose hereinbefore mentioned, without any assignment or transfer; and all moneys paid into the said banks respectively, in pursuance of this Act, or remaining in the hands of any remembrancer, Queen's remembrancer, or other proper officer respectively, at his death or removal, and not invested in the funds, or placed out on securities, as aforesaid, shall be paid over to the succeeding Queen's remembrancer or other proper officer respectively for the time being. **Stock and securities vested in remembrancer, &c., shall, in case of death or removal, vest in the successor.**

30. Provided always, that where any question shall arise touching the title of any person to any money to be paid into the Bank of *England*, or Bank of *Scotland*, or Royal Bank of *Scotland*, in the name and with the privy of the remembrancer of the Court of Exchequer, or the Queen's remembrancer or other proper officer, pursuant to the directions of this Act, or to any bank annuities to be purchased with any such money, or the dividends or interest of any such bank annuities, the person or persons who shall have been in possession of the property so purchased at the time of the purchase shall be deemed to have been lawfully entitled to such property according to such possession, until the contrary shall be shown to the satisfaction of the said Court of Exchequer, and the dividends or interest of the bank annuities to be purchased with such money, and also the capital of such bank annuities, shall be paid, applied, and disposed of **Persons in possession deemed entitled to the contrary shall be shown.**

Appendx. accordingly, unless it shall be made to appear to the said Court that such possession or receipt was wrongful, and that some other person or persons was or were lawfully entitled to such property.

For enrolment of deeds relating to lands, &c., in England and Wales.

31. It shall be lawful for the said principal officers to cause all or any deeds, decrees, evidences, or writings, or other instruments whatsoever, relating to any messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments, in *England or Wales*, now or hereafter vested in the said principal officers, to be enrolled in the office of the remembrancer of Her Majesty's Court of Exchequer, or in the High Court of Chancery, and such fees shall be paid for such enrolment as the Lord High Treasurer or the commissioners of Her Majesty's Treasury shall from time to time appoint, not exceeding such fees as have been used and accustomed to be taken.

Deeds not required to be acknowledged, &c.

32. Any rule or practice requiring deeds to be acknowledged, or requiring an affidavit or declaration to be made of the due execution of any deeds before enrolment, shall not apply to any deed, decree, evidence, or writing, or other instrument whatsoever by this Act required to be enrolled in Her Majesty's Courts of Chancery or Exchequer in *England or Ireland*.

Office copies of enrolments of such deeds, &c., admissible in evidence.

33. A copy of the enrolment of every such deed, decree, writing, or other instrument as aforesaid, signed by the proper officer having the custody of such enrolment, and proved upon oath to be a true copy, shall for every purpose whatsoever be sufficient evidence of the contents of such deed, decree, writing, or other instrument in all courts of law and equity, and on every other occasion whatsoever shall be of the same force and effect, to all intents and purposes, as such deed, decree, writing, or other instrument would be if the same were respectively produced and shown forth.

Ordinance may sue as "the principal officers of Her Majesty's ordnance," without naming them.

34. It shall be lawful for the said principal officers, and their successors for the time being, and they are hereby authorized and empowered, to bring, prosecute, and maintain any action or actions of ejectment, or other proceedings at law or in equity, for recovering possession of any messuages, buildings, castles, lines, or other fortifications, manors, lands, tenements, or hereditaments, as now are or hereafter may be vested in them by this Act, or otherwise howsoever, and to distrain or sue for any arrears of rent which shall have become or shall become due for or in respect thereof under any parol or other demise from the said principal officers, and also to bring, prosecute, and maintain any other action or suit in respect of or in relation to such messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments last aforesaid, or of any trespass or encroachment committed thereon, or damage or injury done thereto, and also upon all covenants and contracts whatsoever now or hereafter made by, to, or with the said principal officers relating to the said ordnance or barrack department, or the defence of the realm; and also to prosecute any other action, suit, or legal proceedings, civil or criminal, concerning the goods or chattels, stores, moneys, and other property, under the care, control, and disposition of the said principal officers; and that in every such action, suit, or other proceedings the said principal officers for the time being shall be called "the principal officers of

Her Majesty's Ordinance," without naming them or any of them; and **Appendx.**
 no such action, suit, or other proceedings shall abate by the death, resignation, or removal of such principal officers or any of them, any thing in any Act or Acts of Parliament, or law or laws, to the contrary thereof notwithstanding: Provided nevertheless, that nothing herein **Privileges**
 contained shall be taken to defeat or abridge, in any such action, suit, or other proceedings, the legal rights, privileges, and prerogatives of **and prerogatives of**
 Her Majesty, her heirs and successors, but that in all such actions, suits, or other proceedings, brought or instituted in the name and on behalf **the Crown**
 of the principal officers of Her Majesty's ordinance, and in all matters relating thereunto, it shall be lawful for the said principal officers to claim, exercise, and enjoy all the same rights, privileges, and prerogatives which have been heretofore claimed, exercised, and enjoyed in any action, suit, or other proceedings whatsoever in any Court of law or equity, by Her Majesty or her predecessors, in the same manner as if the subject matter of the said suits or other proceedings were vested in the Crown, and as if the Crown were actually a party to such actions, suits, or other proceedings: Provided also, that it shall be lawful for Her Majesty to proceed by information in her Court of Exchequer, or by any other Crown process, legal or equitable, in any case in which such actions, suits, arbitrations, or other proceedings might have been otherwise instituted. **not to be curtailed.**

As to service of writ on Secretary of State for War, see section 45 of the Defence Act, 1860, in note to section 19, *supra*.

35.

Repealed by 37 & 38 Vict. c. 98 (Statute Law Revision Act, 1874).

36. It shall be lawful for the said principal officers for the time **Principal**
 being and they are hereby authorised and empowered to give any **officers em-**
 notice, make any claim or demand, and to depute or authorise any **powered to**
 person or persons to make an entry which shall be requisite or expedient to be given or made by or on behalf of Her Majesty, her heirs or successors, with a view either to compel any tenant, lessee, or occupier of any part or parts of the said possessions of the Crown which are or may be by law vested in the principal officers of Her Majesty's ordinance, to quit or deliver up the possession thereof, or to compel the performance of any covenant, contract, or engagement in relation thereto, or to recover possession on non-performance of any covenant, contract, or agreement, or to compel the payment of any sum of money which ought to be paid in respect thereof, and to give any other notice, make any other claim or demand, and depute any person or persons to make any other entry which shall or may be requisite or expedient to be given or made by or for or on behalf of Her Majesty, her heirs or successors, touching any of the said possessions which are or may be by law vested in the principal officers of Her Majesty's ordinance; and that every such notice, claim, or demand which shall be given or made in writing under the hands of the said principal officers for the time being, or any two of them, for any of the purposes aforesaid, and every entry which shall be made by any person or persons deputed or authorised by the said principal officers to make the same, on behalf of Her Majesty, her heirs or successors, into or upon any of the said estates or possessions, shall be good, valid, and effectual to all intents and purposes whatsoever. **to give notices, make claims, and authorise entries, &c.**

Appendx.

**Principal
officers
exempted
from per-
sonal re-
sponsibi-
lity.**

37. Nothing contained in this Act, or to be contained in any covenant, contract, lease, or other instrument hereby authorised to be entered into, made, taken, or executed by the said principal officers or any of them, shall extend to charge the person or persons of all or any of the said principal officers executing any such covenant, contract, lease, or other instrument, or the heirs, executors, or administrators of the same principal officers, or any of them, or their or any of their own proper lands, tenements, goods, or chattels, with or for the performance of all or any of the covenants, conditions, or agreements in the same covenant, contract, lease, or other instrument to be contained on the part of the same principal officers, or any of them, nor shall any officer of Her Majesty's ordnance be personally liable, nor shall the property of any such officer be liable, to any legal process or execution in such actions, suits, arbitrations, or other proceedings as aforesaid.

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COMPENSATION IN THE COUNTY OF LONDON. Appndx.

MANY of the improvements in London have been carried out under special Acts of Parliament, but powers of dealing with land compulsorily are conferred generally by various statutes on the various local authorities which govern London, some of which statutes are public Acts and some personal and local.

The central authority is now the London County Council, to which body was transferred all the powers of the Metropolitan Board of Works. Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40. The other authorities to carry out the powers and duties of the Metropolis Management Acts, the Public Health Act, and other like Acts are in the city, the Commissioners of Sewers, in certain parishes the vestry, and in certain districts the district board of works, while in a few cases special provision is made for providing a local authority, as, for example, in certain liberties. In Woolwich there is a local board of health.

It is proposed to deal here with the powers of interfering with land which are given by statutes other than the statutes at large, and which are not merely given for a specific or transient purpose. The Acts are arranged in chronological order.

THE METROPOLITAN PAVING ACT, 1817.

57 GEO. 3, c. cxxix.

An Act for better paving, improving, and regulating the streets of the metropolis, and removing and preventing nuisances and obstructions thereon.
[16th June, 1817.]

* * * * *

This Act, commonly known as *Michael Angelo Taylor's Act*, which was at first limited to certain districts, was extended to the whole metropolis by the Metropolitan Management Act, 1862, s. 73. It has been in some respects impliedly repealed by the later Metropolitan Acts (see *Fortescue v. Vestry of St. Matthew, Bethnal Green* [1891], 2 Q. B. 170; *Summers v. Holborn Board of Works* [1893], 1 Q. B. 612); but there has been nothing like a general repeal of its provisions. See *Wyatt v. Gens* [1893], 2 Q. B. 225.

The Highway Act, 1835, *ante*, p. 751, also applies to London (*Buck v. Holmes*, 56 L. T. 173); but section 112 thereof expressly provides that nothing therein contained shall limit the powers contained in *Michael Angelo Taylor's Act*. The vestries and district boards exercise the powers of the surveyor of highways in London. Metropolis Management Act, 1855, s. 96. The Metropolitan Building Act, 1894, s. 6, also saves the powers of any local authority to widen, alter, or improve any street.

Appdx. The sections (80—96) dealing with the taking of land for the widening of streets are as follows:—

Streets may be widened and improved with consent of owners.

80. And be it further enacted, that for the improvement of the streets and public places in the parochial or other districts within the jurisdiction of this Act, and for the public advantage, it shall and may be lawful to and for the commissioners or trustees, or other persons having the control of the pavements of any parochial or other district, from time to time, and at all times hereafter, to alter, widen, turn, or extend any of the streets or other public places within any such parochial or other district (except turnpike roads), and to lengthen and continue or open the same from the sides or ends of any streets or public places within any parochial or other district, into any other street or public place within such or any other parochial or other district, and to raise, level, lower, drain, ballast, gravel, or pave such new part or parts of any such streets or public places so altered, widened, extended, opened, or lengthened as aforesaid; and that if any houses, walls, buildings, lands, tenements, and hereditaments, or any part thereof, shall be adjudged by the said commissioners or trustees, or other persons as aforesaid, to project into, obstruct, or prevent them from so altering, turning, widening, extending, lengthening, continuing, or opening the said streets or public places within the said parochial or other district, and that the possession, occupation, and purchase of such houses, walls, buildings, lands, tenements, or hereditaments will be necessary for that purpose, it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, and they shall have full power and authority to treat, contract, and agree, or to employ any person or persons to treat, contract, and agree with the several owner or owners, occupier or occupiers of all such houses, walls, buildings, lands, and hereditaments, of whatsoever nature, tenure, kind, or quality, for the purposes aforesaid, and to pay for the same such sum and sums of money as shall be agreed upon by the said commissioners or trustees, or other persons as aforesaid, and the owner or owners, occupier or occupiers thereof, out of the money to arise and be raised and to be received by them, either by virtue of any local Act or Acts of Parliament relating to such parochial or other districts, or of this Act, and to pull down, use, sell, or dispose of such houses, walls, and buildings, and the materials thereof, and lay the sites thereof, and also such other lands, tenements, or hereditaments, or so much thereof as they, the said commissioners or trustees, or other persons as aforesaid, shall think proper, into the said streets, or other public places; and all such new parts of such streets or public places, and the owners and occupiers of houses and buildings, messuages, and other hereditaments therein and adjoining thereto, shall be subject and liable to all the rates, assessments, powers, provisions, orders, clauses, and things to be made by virtue of or contained in any local Act or Acts of Parliament relating to such parochial or other district, or by virtue of or contained in this Act in the same manner as the present streets and public places included in any such local Act or Acts, or within the jurisdiction of this Act, and the owners and occupiers of houses or buildings, and messuages or other hereditaments therein and adjoining thereto.

"Persons having the control of the Pavements."—These are the Commissioners of Sewers in the city, the vestry in certain parishes, and the district board in certain districts defined in the Metropolitan Management Act.

Purchase and taking of Lands, Houses, and Buildings.—The procedure under these sections is for the local authority to adjudge that houses, buildings, walls, tenements, or any parts thereof, obstruct or prevent them altering the street. It is open to them to adjudge that the whole or part of a house or building obstructs the proposed widening. Each adjudication becomes a specific description of the property which may be taken. If they honestly, although erroneously, adjudge the whole of a house to be necessary, the adjudication cannot be questioned; but if they adjudge part only to be necessary, the owner can obtain an injunction to restrain them taking more than that part. *Thomas v. Daw*, L. R. 2 Ch. 1.

But they cannot adjudge that the possession of the whole of a piece of land is necessary when they only intend to use a small part of it. They can only take the piece of land which they *bona fide* expect they will require for the purpose of the improvement, *Gard v. Commissioners of Sewers of the City of London*, 28 Ch. D. 486.

The same principle is applicable to buildings. Thus, where part of an orphanage was required to widen a street and the owners received notice to treat for the whole, but did not wish to sell the whole, the Court granted an injunction to prevent the vestry from proceeding to have the value of the whole assessed. *Touliere v. Vestry of St. Mary Abbots, Kensington*, 80 Ch. D. 649.

The authority cannot, however, take land in order merely to alter the level of a street, and an adjudication that a certain property is required for the purpose of alterations cannot be supported, if there are no grounds upon which any reasonable person could come to the conclusion that it was so required. They ought also to determine the nature of the improvements before they adjudicate. *Lynch v. Commissioners of Sewers*, 32 Ch. D. 72.

If they adjudicate that part only of a house is necessary, they cannot, for the same reason, be obliged to take the whole, although the owner may wish to sell the whole, unless, perhaps, the part cannot be severed from the rest without destroying the house as a house. There is no provision corresponding to section 92 of the Lands Clauses Act, 1845, *ante*, p. 238. *Gordon v. Vestry of St. Mary Abbots, Kensington* [1894], 2 Q. B. 742.

After the adjudication it is usual to serve a notice to treat in conformity therewith, but the Act does not require one. See per COTTON, L.J., in *Lynch v. Commissioners of Sewers*, 32 Ch. D. 72, p. 85. If, however, a notice to treat is served which includes several pieces of land belonging to one person, the jury must be summoned to assess the value of all and separate juries cannot be summoned to assess the value of each piece. *Ecclesiastical Commissioners v. Commissioners of Sewers of London*, 14 Ch. D. 305.

If a notice to treat is given under this Act, it has been held that the vestry will be bound by it, and that the Court will issue a *mandamus* to compel the vestry to issue their warrant to summon a jury to assess the compensation. BLACKBURN, J., stated the principle generally thus;—"That whenever by Act of Parliament a body is entitled to take lands compulsorily, then, as soon as they have made up their minds to do so, and give the other side notice of their intention, thereby hampering the land and leaving it no longer free in the hands of the owner, they are bound to go on." *Birch v. Vestry of St. Marylebone*, 30 L. T. (N.S.) 697.

It has been held that portions of disused churchyards may be sold under this Act and the City of London Sewers Act, 1851 (14 & 15 Vict. c. 91), for the purpose of widening streets, subject to a faculty. *Vicar of St. Botolph Without, Aldgate v. Parishioners of Same* [1892], P. 161. Whether a chancellor can grant a faculty for this purpose in the absence of a desecrating Act would appear doubtful, but it is the custom to grant such faculties in the Consistory Court of London. See this discussed in *In re Plumstead Burial Ground* [1895], P. 225.

81. And be it further enacted, that it shall and may be lawful for all Corporate bodies politic, corporate, or collegiate, corporations aggregate or sole, or col-

Appndx. tenants for life or in tail, or others having a partial or qualified interest or estate in any houses, lands, tenements, or hereditaments, husbands, legiate bodies and females covert, guardians, trustees, and feoffees in trust for charities or other purposes, committees, executors, or administrators, and all other incapacitated persons whomsoever, not only on behalf of themselves, and their respective heirs, executors, administrators, and successors, but also on behalf of all persons entitled in reversion or remainder expectant on an estate tail, and on behalf of all persons entitled in reversion or remainder expectant on an estate for life, or other less estate, or by way of executory devise, in case such persons shall be incapacitated or decline to treat, and on behalf of their respective wives and cestuique trusts, whether infants, issue unborn, lunatics, idiots, females covert, or others, and for all and every other person or persons whomsoever who are and shall be seized, possessed of, or interested in any such houses, lands, tenements, or hereditaments, to treat and agree with the said commissioners or trustees, or other persons having the control of the pavements in the streets or public places in any parochial or other district within the jurisdiction of this Act as aforesaid, for the absolute sale thereof, and to sell and convey to the said commissioners or trustees, or other persons as aforesaid, by feoffment, lease, and release, or bargain and sale, by deed indented and enrolled in any of His Majesty's Courts of Record at Westminster, for such valuable consideration as shall be *bona fide* agreed upon for such houses, lands, tenements, or hereditaments as shall be adjudged necessary and convenient for the purposes aforesaid; and that all contracts, agreements, sales, or conveyances which shall be *bona fide* made for the purposes aforesaid, shall be good and effectual in the law to all intents and purposes, anything to the contrary thereof in anywise notwithstanding.

When parties refuse or are unable to treat, &c., a precept to be issued for impanneling a jury,

82. And be it further enacted, that if any body or bodies politic, corporate, or collegiate, or any other person or persons seized or possessed or interested in any such houses, buildings, lands, tenements, or hereditaments as aforesaid, shall refuse to treat or agree, or shall not agree, or by reason of absence or disability cannot agree with the said commissioners or trustees or other persons having the control of the pavements of any streets or public places in any parochial or other district within the jurisdiction of this Act, or with any person or persons authorised by them, for the sale and conveyance of their respective estates and interest therein, or cannot be found or known, or shall not produce and evince a clear title to the premises they are in possession of, or to the interest they claim therein, to the satisfaction of the said commissioners or trustees, or other persons as aforesaid, or of the person or persons so authorised by them, then and in every such case it shall be lawful for the said commissioners or trustees or other persons as aforesaid, and they are hereby required to issue a warrant or warrants, precept or precepts, directed to the sheriff or sheriffs, or bailiff or other proper officer of the city, borough, or county wherein the premises shall respectively lie or be, who is hereby authorised, directed, and required accordingly to impannel, summon, and return a competent number of substantial and disinterested persons qualified to serve on juries, not less than forty-eight nor more than seventy-two; and out of such persons so to be impanelled, summoned, and returned, a jury of twelve men shall be drawn by some indifferent person to be by the said commissioners or trustees or other persons as aforesaid appointed, in such manner as juries for the trial of issues joined in His Majesty's courts at Westminster

are by an Act made in the third year of the reign of His late Majesty King George the Second, intituled "An Act for the better Regulation of Juries," are directed to be drawn; which persons, so to be impannelled, summoned, and returned as aforesaid, are hereby required to come and appear before the justices of the peace for the city, borough, or county wherein the premises shall lie or be, at some court of general or quarter sessions of the peace to be holden in and for the same city, borough, or county, or at some adjournment thereof, as in such warrant or warrants, precept or precepts, shall be directed and appointed, and to attend such court of general or quarter sessions from day to day until discharged by the said court; and all parties concerned shall and may have their lawful challenges against any of the said jurymen, but shall not be at liberty to challenge the array; and the said justices are hereby authorised and empowered, by precept or precepts, from time to time as occasion shall require, to call before them all and every person and persons whomsoever who shall be thought proper and necessary to be examined as a witness or witnesses on his, her, or their oath or oaths, touching or concerning the premises; and the said justices, if they think fit, shall and may, on the application of either party, likewise authorise the said jury to view the place or places or premises in question, in such manner as they shall direct; and the said justices shall have power to adjourn such court from day to day as occasion shall require, and to command such jury, witnesses, and parties to attend until all such affairs for which they were summoned shall be concluded; and the said jury upon their oaths (which oaths, as also the oaths of such person or persons as shall be called upon to give evidence, the said justices are hereby empowered and required to administer) shall inquire of the value of such houses, buildings, lands, tenements, or hereditaments, and of the proportionable value of the respective estates and interest of all and every person and persons seised or possessed thereof, or interested therein, or of or in any part or parts thereof, and shall assess and award the sum or sums of money to be paid to such person or persons, party or parties respectively, for the purchase of such houses, buildings, lands, tenements, or hereditaments, and of such respective estates and interest therein, and also for goodwill, improvements, or any injury or damage whatsoever that may affect any such person or persons, party or parties, either as leaseholders or tenants at will, provided that such goodwill shall be estimated by what, in the opinion of such jury, the same would have been worth in case the improvements intended by this Act had not been in contemplation; and the said justices shall and may give judgment for such sum or sums of money so to be assessed; which verdict or verdicts, and the judgment and judgments, determination and determinations thereupon (notice in writing being given to the person or persons interested or claiming so to be, at least fourteen days before the time of the meeting of the said justices as aforesaid and jury, by leaving such notice at the dwelling house of such person and persons, or at his, her, or their last usual place or places of abode, or with some tenant or occupier of the premises respectively intended to be valued), shall be binding and conclusive to all intents and purposes whatsoever against all bodies politic, corporate, and collegiate, and all and every person and persons claiming any estate, right, title, trust, use, or interest, in, to, or out of such houses, buildings, lands, tenements, or hereditaments and premises in possession, reversion, remainder, or expectancy, as well infants and issue unborn, lunatics, idiots, and femmes covert, and persons under any other legal incapacity or disability, as all other cestuique

Appndx.

who are to be drawn as 3 Geo. 2, c. 25, directs. (a)

Jurymen may be challenged.

Justices, on the application of either party, may direct a view of the premises. Jury to assess the value on oath.

Verdict of the jury, &c., to be final, previous notice being given to the parties interested.

Appendx. trusts, their, his, and her heirs, successors, executors, and administrators, and against all other persons whomsoever; and the said verdicts, judgments, and determinations, and all other proceedings of the said justices and juries, so to be made, given, and pronounced as aforesaid, shall be fairly written on parchment, and signed by the clerk of the peace for the time being of the city, borough, or county wherein the premises shall respectively lie or be; and in case it shall so happen that the sum or sums of money so to be assessed and awarded in consequence of such refusal to treat and agree as aforesaid, as the value of such houses, buildings, lands, tenements, or hereditaments, or as such proportional value as aforesaid, and as the recompense and satisfaction to be made for the injury or damage sustained as before mentioned respectively, shall not exceed the sum or sums of money which the said commissioners or trustees, or other persons as aforesaid, or any person or persons authorised by them, shall have previously offered to pay as and for such value, recompense, and satisfaction; then and in every such case all the reasonable costs, charges, and expenses of causing and procuring such value and recompense to be assessed and awarded as aforesaid, and also assessing and awarding the same, shall be borne and paid by the body or bodies politic, corporate, or collegiate, or other person or persons so seized or possessed of or interested in such houses, buildings, lands, tenements, or hereditaments, and so refusing to treat and agree as before mentioned respectively; and the said commissioners or trustees, or other persons as aforesaid, are hereby authorised and empowered to deduct and retain the said costs, charges, and expenses out of the sum or sums of money so to be assessed or awarded as aforesaid, or out of any part thereof; Provided always, that in all cases where any person or persons shall by reason of absence have been prevented from treating about such recompense or satisfaction as aforesaid, such costs and charges shall be borne and paid by the said commissioners or trustees, or other persons as aforesaid, in manner aforesaid.

If the sum assessed shall not exceed the sum offered,

the costs of such assessment, &c., to be paid by such body politic, &c., and the commissioners, &c., may retain the same out of the sum so assessed.

The provision as to costs should be noted, as it is quite different from that of the Lands Clauses Act, 1845, ss. 34, 52, *ante*, pp. 78, 102. Under this Act, if the vestry make no offer or if the amount awarded is less than the amount offered, each party pays his own costs, and no order can be made requiring the vestry to pay the costs of the landowner. *Reg. v. Justices of London; Ex parte Phelps* [1895], 1 Q. B. 881.

Justices empowered to impose fines for non-attendance.

83. And be it further enacted, that the said justices shall have power from time to time to impose any reasonable fine, not exceeding the sum of 20l., on such sheriff or bailiff, or his deputy or deputies, bailiffs or agents respectively, making default in the premises, and on any of the persons who shall be summoned and returned on any such jury or juries, and shall not appear, without sufficient excuse, or appearing shall refuse to be sworn on the said jury or juries, or being so sworn shall not give his or their verdict; and also on any person or persons who shall be summoned to give evidence touching any of the matters aforesaid, and shall not attend, or attending shall refuse to be sworn, or to affirm, or who shall refuse to give his, her, or their evidence, and on any person or persons who shall in any other manner wilfully neglect his, her, or their duty in the premises, contrary to the true intent and meaning of this Act; and from time to time to levy such fine or fines, by order of the said justices, by distress and sale of the offender's goods and chattels, together with the reasonable charges of every such distress and sale, returning the overplus (if any) to the owner or owners; and that a copy

of the order of the said justices, signed by the clerk of the peace for the time being of the city, borough, or county wherein the premises shall lie or be, as the case shall require, shall respectively be sufficient authority to the person or persons therein to be appointed, and to every other person acting or aiding and assisting therein, to make such distress and sale; and all such fines shall be paid to the treasurer or treasurers of the commissioners or trustees, or other persons as aforesaid, having the control of the pavements in the parochial or other district wherein such premises shall lie or be, or to such other person or persons as they may respectively from time to time appoint.

Appendix.

84. And be it further enacted, that if any money shall be agreed or awarded to be paid for any lands, buildings, tenements, or hereditaments, or for any other matter, right, or interest, of what nature or kind soever, purchased, taken, or used by virtue of the powers of this Act for the purpose thereof, which shall belong to any corporation, feme covert, infant, lunatic, or person or persons under any other disability or incapacity, such money shall, in case the same shall amount to the sum of 200*l.*, with all convenient speed be paid into the Bank of England, in the name and with the privity of the Accountant-General of the High Court of Chancery, to be placed to his account there *ex parte* the said commissioners or trustees, or other persons having the control of the pavements of the streets or public places in the parochial or other districts within the jurisdiction of this Act, wherein such lands, buildings, tenements, or hereditaments shall be or lie as aforesaid, together with the name or names of such person or persons as the said commissioners or trustees or other persons as aforesaid, by writing signed by them, shall direct and appoint, to the intent that such money shall be applied, under the direction and with the approbation of the said Court, to be signified by an order made upon a petition to be preferred in a summary way by the person or persons who would have been entitled to the rents and profits of the said lands, buildings, tenements, or hereditaments, in the purchase of land tax, or discharge of any debt or debts, or such other incumbrance or part thereof as the said Court shall authorise to be paid, affecting the same lands, buildings, tenements, or hereditaments, or affecting other lands, buildings, tenements, or hereditaments standing settled therewith to the same or the like uses, intents, or purposes; or where such money shall not be applied, then the same shall be laid out and invested, under the like direction and approbation of the said Court, in the purchase of other messuages, lands, buildings, tenements, or hereditaments, which shall be conveyed and settled to, for, and upon such and the like uses, trusts, intents, and purposes, and in the same manner, as the messuages, lands, buildings, tenements, and hereditaments which shall be so purchased, taken, or used as aforesaid, stood settled or limited, or such of them as at the time of making such conveyances and settlement shall be existing undetermined and capable of taking effect; and in the meantime and until such purchase shall be made, the said money shall, by order of the Court of Chancery, upon application thereto, be invested by the said Accountant-General, in his name, in the purchase of 3*l.* per centum consolidated or 3*l.* per centum reduced bank annuities; and in the meantime and until the said bank annuities shall be ordered by the said Court to be sold for the purposes aforesaid, the dividends and annual produce of the said consolidated or reduced bank annuities shall from time to time be paid, by order of the said Court, to the person or persons who would for the time being have

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Appndx. been entitled to the rents and profits of the said lands, buildings, tenements, and hereditaments so hereby directed to be purchased, in case such purchase or settlement were made.

Application where the compensation does not exceed 200*l.* nor less than 20*l.* 85. Provided always, and be it further enacted, that if any money so agreed or awarded to be paid for any lands, buildings, tenements, or hereditaments, or for any other matter, right, or interest, of what nature or kind soever, purchased, taken, or used for the purposes aforesaid, and belonging to any corporation, or to any person or persons under disability or incapacity as aforesaid, shall be less than the sum of 200*l.*, and shall exceed the sum of 20*l.*, then and in all such cases the same shall, at the option of the person or persons for the time being entitled to the rents and profits of the hereditaments so purchased, taken, or used, or of his, her, or their guardian or guardians, committee or committees, in case of infancy or lunacy, to be signified in writing under their respective hands, to be paid into the bank in the name and with the privy of the said Accountant-General of the High Court of Chancery, and be placed to his account as aforesaid, in order to be applied in manner hereinbefore directed; or otherwise the same shall be paid, at the like option, to two trustees, to be nominated by the person or persons making such option, and approved of by the said commissioners or trustees, or other persons as aforesaid (such nomination and appropriation to be signified in writing under the hands of the nominating and approving parties), in order that such principal money, and the dividends arising thereon, may be applied in any manner hereinbefore directed, so far as the case may be applicable, without obtaining or being required to obtain the direction or approbation of the Court of Chancery.

Application where the money is less than 20*l.* 86. Provided also, and be it further enacted, that where such money so agreed or awarded to be paid as next before mentioned shall be less than 20*l.*, then and in all such cases the same shall be applied to the use of the person or persons who would for the time being have been entitled to the rents and profits of the hereditaments and premises so purchased, taken, or used for the purposes of this Act, in such manner as the said commissioners or trustees, or other persons as aforesaid, shall think fit; or in case of infancy or lunacy, then to his, her, or their guardian or guardians, committee or committees, to and for the use and benefit of such person or persons so entitled respectively.

On payment of the purchase money premises to vest in commissioners, &c. 87. And be it further enacted that upon payment of any sum or sums so agreed or awarded to the party or parties to whom the same shall be so awarded, or upon the deposit of the same in the Bank of England in manner by this Act directed (as the case may be), the said lands, tenements, and hereditaments, in respect whereof the same shall have been so paid or deposited as aforesaid, shall vest in the commissioners or trustees, or other persons as aforesaid for the time being, in manner and for the purposes aforesaid, who shall be deemed in law to be in the actual possession thereof to all intents and purposes whatsoever, freed and discharged from all former and other estates, rights, titles, interests, claims, and demands whatsoever.

Where any question shall arise touching the title to 88. Provided always, and be it further enacted, that where any question shall arise touching the title of any person to any money to be paid into the Bank of England in the name and with the privy of the

Accountant-General of the Court of Chancery, in pursuance of this Act, **Apndx.**
 for the purchase of any lands, tenements, or hereditaments, or of any
 estate, right, or interest in any lands, tenements, or hereditaments to be
 purchased in pursuance of this Act, or to any bank annuities to be
 purchased with any such money, or the dividends or interest of any such
 bank annuities, the person or persons who shall have been in possession
 of such lands, tenements, or hereditaments at the time of such purchase,
 and all persons claiming under such person or persons or under the
 possession of such person or persons, shall be deemed and taken
 to have been lawfully entitled to such lands, tenements, or here-
 ditaments, according to such possession, until the contrary shall be
 shown to the satisfaction of the said Court of Chancery; and the
 dividends or interest of the bank annuities to be purchased with such
 money, and also the capital of such bank annuities, shall be paid,
 applied, or disposed of accordingly, unless it shall be made appear to
 the said Court that such possession was a wrongful possession, and that
 some other person or persons was or were lawfully entitled to such lands,
 tenements, or hereditaments, or to some estate or interest therein.

money to be paid, the person who shall be in possession of lands, &c., at the time of such purchase, shall be deemed entitled thereto, according to such possession, unless, &c.

89. Provided also, and be it further enacted, that where by reason of
 any disability or incapacity of the person or persons or corporation
 entitled to any lands, tenements, or hereditaments to be purchased, or
 purchased under the authority of this Act, the purchase-money for the
 same shall be required to be paid into the Court of Chancery, and to be
 applied in the purchase of other lands, tenements, or hereditaments to
 be settled to the like uses in pursuance of this Act, it shall be lawful
 for the said Court of Chancery to order the expenses of all purchases
 from time to time to be made in pursuance of this Act, or so much of
 such expenses as the said Court shall deem reasonable, to be paid by
 the said commissioners or trustees, or other persons as aforesaid, who
 shall from time to time pay such sums of money for such purposes, as the
 said Court shall direct.

The Court of Chancery may order reasonable expenses of purchase to be paid by the commissioners, &c. (a)

There was some divergence of opinion as to whether costs of obtaining an
interim investment or of payment out were payable by the authority taking
 the land. See *Ex parte Vicar of St. Sepulchre*, 33 L. J. Ch. 372; *In re*
Saunders's Estate, 10 Eq. 532; *In re Mercer's*, 7 Ch. D. 184; *Ex parte*
Mercers Company, 10 Ch. D. 481. The Judicature Act, 1890, s. 5, has given
 the court full discretion in these cases, and costs will be awarded as under
 section 80 of the Lands Clauses Act, 1845, *ante*, p. 193. *In re Fisher* (1894),
 1 Ch. 450, where the Court ordered the costs of the payment out of money paid
 in under this Act to be paid by the authority taking the land.

90. And be it further enacted, that every tenant at will or lessee for
 a year, or any other person or persons in possession of any such houses,
 buildings, lands, tenements, and hereditaments, or any part thereof,
 which shall be purchased by virtue and for the purposes of this Act,
 and who shall have no greater interest in the premises than as tenant at
 will or lessee for a year, or from year to year, shall deliver up the posses-
 sion of such premises to the said commissioners, or trustees, or other
 persons as aforesaid having the control of the pavements in the streets
 or public places in the parochial or other division within the jurisdiction
 of this Act, wherein such houses, buildings, lands, tenements, and here-
 ditaments, or to such person or persons as the said commissioners or
 trustees, or other persons as aforesaid shall appoint to take possession

Tenants at will, &c., to deliver possession on six months' notice.

Appendix. of the same, upon having six calendar months' notice to quit such possession from the said commissioners or trustees, or other persons as aforesaid, or from the person or persons so authorised by them; and such person or persons in possession shall at the end of the said six calendar months, whether such notice be given with reference to the time or times of such tenants holding or not, or so soon as he, she, or they shall be required, peaceably and quietly deliver up the possession of the said premises to the said commissioners or trustees, or other persons as aforesaid, or the person or persons authorised by the said commissioners or trustees, or other persons as aforesaid, to take possession thereof; and in case any such tenant should be compelled to quit before the expiration of his or her term in any such premises, then and in such case the said commissioners or trustees, or other persons as aforesaid, shall and they are hereby required to make satisfaction and compensation for the loss or damage which he or she shall or may sustain thereby; and in case any difference or dispute shall arise as to the amount of such satisfaction or compensation, the same shall or may be determined, settled, and ascertained by a jury, in such and the like manner as the sum or sums of money to be paid for the purchase of any lands, tenements, or hereditaments is herein directed to be determined, settled, and ascertained; and that in case any such person or persons so in possession as aforesaid shall refuse to give such possession as aforesaid, it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, to issue their precept or precepts to the sheriff or sheriffs, or bailiff, or other proper officer of the city, borough, or county wherein such parochial or other district shall be situate, to deliver possession of the said premises to such person or persons as shall in such precept or precepts be nominated to receive the same; and the said sheriff or sheriffs or bailiff, and every other proper officer, is hereby authorised and required to deliver such possession accordingly of the said premises, and to levy such costs as shall accrue from the issuing and execution of such precept or precepts on the person or persons so refusing to give possession as aforesaid, by distress and sale of his, her, or their goods.

Mortgagees, on tender of principal and interest to convey;

§1. And be it further enacted, that all and every person and persons who shall have any mortgage or mortgages on such houses, buildings, lands, tenements, and hereditaments, not being in possession thereof by virtue of such mortgage or mortgages, shall on the tender of the principal money and interest due thereon, together with the amount of six calendar months' interest on the said principal, by the said commissioners or trustees, or other persons having the control of the pavements in the streets or public places in such parochial or other district, within the jurisdiction of this Act, wherein the said houses, buildings, lands, tenements, and hereditaments shall lie or be as aforesaid, or by such person or persons as they shall appoint, immediately convey, assign, and transfer such mortgage or mortgages to the said commissioners or trustees or other persons as aforesaid, or to such person or persons as they shall appoint; or in case such mortgagee or mortgagees shall have notice in writing from the said commissioners or trustees or other persons as aforesaid, or from such person or persons as they shall appoint, that they will pay off and discharge the principal money and interest which shall be due on the said mortgage or mortgages at the end or expiration of six calendar months, to be computed from the day of giving such notice, and then at the end of six calendar months, on

payment of the principal and interest so due, such mortgagee or mortgagees shall convey, assign, and transfer his, her, or their interest in the premises to the said commissioners or trustees or other persons as aforesaid, or to such person or persons as shall be appointed in trust for them; and in case the mortgagee or mortgagees shall refuse to convey and assign as aforesaid on such tender or payment, that then all interest on every such mortgage shall from thenceforth cease and determine.

Appndx.

92. Provided always, and be it further enacted, that in case the sum due upon any such mortgage or mortgages, with all interest due thereon, shall amount to more than the real value of the premises, to be ascertained as directed by this Act, then the said commissioners or trustees or other persons as aforesaid shall not be liable to pay to the mortgagee or mortgagees more than such real value of such premises, so ascertained as aforesaid.

The mortgagees not to be paid more than the real value of premises.

93. And be it further enacted, that the conveyance of any such estate or interest of any *feme covert* to the said commissioners or trustees or other persons as aforesaid for the time being, or any five or more of them, or any person or persons in trust for them, by indenture or indentures of bargain and sale, sealed and delivered by such *feme covert*, in the presence of and attested by two credible witnesses, and duly acknowledged, and to be enrolled in the High Court of Chancery within six calendar months after the making thereof shall as effectually and absolutely convey the estate and interest of such *feme covert* in the premises as any fine or fines, recovery or recoveries, would or could do, if levied or suffered thereof in due form of law; and further, that all bargains and sales whatsoever to be made of any such houses, buildings, lands, tenements, and hereditaments, as shall be purchased by the commissioners or trustees or other persons as aforesaid for the time being, by virtue and for the purposes of this Act, and enrolled as aforesaid, shall have the like force, effect, and operation in law, to all intents and purposes, as any fine or fines, recovery or recoveries whatsoever would have had if levied or suffered by the bargainer or bargainiers, or any person or persons seised of or entitled to any estate or interest in the premises in trust for such bargainer or bargainiers, in any manner or form whatsoever.

Bargains and sales to have the force of fines and recoveries.

94. And be it further enacted, that upon payment of the principal money and interest due on any mortgage as aforesaid into the Bank of England, at the end of six calendar months from the day of giving such notice as aforesaid, for the use of the mortgagee or mortgagees, the cashier or cashiers of the bank shall give a receipt or receipts for the said money, in like manner as is hereinbefore directed in cases of other payments into the bank; and thereupon all the estate, right, title, interest, use, trust, property, claim and demand of the said mortgagee or mortgagees, and of all and every person or persons in trust for him, her, or them, shall vest in the said commissioners or trustees or other persons as aforesaid, and they shall be deemed to be in the actual possession of the premises comprised in such mortgage or mortgages, to all intents and purposes whatsoever.

Upon payment of principal and interest into the bank, premises to vest in the commissioners, &c.

95. And be it further enacted, that all sums of money, or other consideration, recompense, or satisfaction, to be paid or made pursuant to any such agreement or verdict as aforesaid, or in discharge of any such mortgage, shall be paid or tendered to the party or parties entitled to

Monies to be paid or tendered before any

Appendix.

use made
of the
premises.

Estate
may be
sold, the
persons of
whom they
were
bought
having the
first offer.

the same, or paid into the Bank of England as aforesaid, before the said commissioners or trustees or other persons as aforesaid, or any person or persons authorised by them, shall proceed to pull down any house or houses, or other erections or buildings comprised in or affected by such agreement, verdict, or mortgage respectively, or to use the ground for any purposes before mentioned in this Act.

96. And be it further enacted, that it shall and may be lawful to and for the said commissioners or trustees or other persons as aforesaid, from time to time absolutely to sell and dispose of all or any of the freehold or leasehold estates, lands, houses, hereditaments, and premises which shall hereafter be conveyed to them in pursuance of this Act or otherwise: Provided that the said freehold or leasehold estates, lands, houses, hereditaments, and premises so purchased are first offered for sale to the respective person or persons of or from whom the premises respectively were purchased by or on behalf of the said commissioners or trustees or other persons as aforesaid; and if such person or persons respectively shall not then and thereupon agree (except with respect to and on account of the price thereof as hereinafter mentioned), or shall refuse (except with respect to and on account of the price thereof) to purchase the same respectively an affidavit shall be made and sworn before a master in the High Court of Chancery, or before one of His Majesty's justices of the peace for the city, borough, or county wherein such parochial or other district shall be situate (who are hereby respectively empowered and directed to take the same), by some person or persons uninterested in the said freehold or leasehold estates, lands, houses, hereditaments, or premises, stating that such offer was made by or on the behalf of the said commissioners or trustees or other persons as aforesaid, and that such offer was not then and thereupon agreed to, or was refused by the person or persons to whom the same was so offered; and that any such affidavit shall in all courts whatsoever be sufficient evidence and proof that such offer was made, and was not agreed to, or was refused by the person or persons to whom such offer was made, as the case may be; and in case such person or persons shall be desirous of repurchasing the same, and he, she, or they, and the said commissioners or trustees or other persons as aforesaid, shall differ and not agree with respect to the price thereof, then the price or prices thereof shall be ascertained by a jury, in the manner hereinbefore directed with respect to the disputed value of premises to be purchased by the said commissioners or trustees or other persons as aforesaid in pursuance of this Act; and the expense of hearing and determining such differences shall be borne and paid in like manner as is hereinbefore directed with respect to such purchase made by the said commissioners or trustees or other persons as aforesaid (*mutatis mutandis*); and the money to arise by the sale or sales which may be made by the said commissioners or trustees or other persons as aforesaid, of such freehold or leasehold estates, lands, houses, hereditaments, and premises, shall be applied by the said commissioners or trustees or other persons as aforesaid to the purposes of the local Act or Acts of Parliament relating to the parochial or other division over the pavement whereof they shall possess a control, or to the purposes of this Act, but the purchaser or purchasers thereof shall not be answerable or accountable for any misapplication or nonapplication of the money paid by him or them for such freehold or leasehold estates, lands, houses, hereditaments, and premises.

THE METROPOLIS MANAGEMENT ACT, 1855.

18 & 19 VICT. CAP. 120.

An Act for the better Local Management of the Metropolis.

[14th August, 1855.]

* * * * *

By section 68, the sewers, with the exception of the main sewers, are vested in the vestries and district boards, the main sewers are vested in the county council. Section 135.

Throughout this Act for the Metropolitan Board of Works read the London County Council.

69. The vestry of every parish mentioned in Schedule (A.) to this Act, and the Board of Works for every district mentioned in Schedule (B.) to this Act, shall (subject to the powers by this Act vested in the Metropolitan Board of Works) from time to time repair and maintain the sewers under this Act vested in them, or such of them as shall not be discontinued, closed up, or destroyed under the powers herein contained, and shall cause to be made, repaired, and maintained such sewers and works, or such diversions or alterations of sewers and works, as may be necessary for effectually draining their parish or district, and shall cause all banks, wharves, docks, or defences abutting on or adjoining any river, stream, canal, pond, or watercourse in such parish or district, to be raised, strengthened, or altered or repaired, where it may be necessary so to do, for effectually draining, or protecting from floods or inundation such parish or district; and it shall be lawful for any such vestry or district board to carry any such sewers or works through, across, or under any turnpike road, or any street or place laid out as or intended for a street, or through or under any cellar or vault which may be under the pavement or carriageway of any street, and into, through, or under any lands whatsoever, making compensation for any damage done thereby as hereinafter provided; and it shall be lawful for any such vestry or district board from time to time to enlarge, contract, raise, lower, arch over, or otherwise improve or alter all or any of the sewers, watercourses, and works which shall be from time to time vested in them or subject to their order and control, and to discontinue, close up, or destroy such of them as they may deem to have become unnecessary: Provided always, that no new sewer shall be made without the previous approval of the Metropolitan Board of Works: Provided also, that the discontinuance, closing up, destruction, or alteration of any sewer as aforesaid shall be so done as not to create a nuisance; and if by reason thereof any person shall be deprived of the lawful use of any covered sewer, it shall be the duty of the vestry or district board to provide some other sewer or a drain as effectual for his use as the sewer of which he is so deprived: Provided also, that where the vestry or district board alter any sewer, or provide a new sewer in substitution for a sewer discontinued, closed up, or destroyed, they may contract or otherwise alter the private drains communicating with the sewer so altered, or with the sewer so discontinued, closed up, or destroyed, or may close up or destroy such private drains, and provide new drains in lieu thereof, as the circumstances of the sewerage may appear to them to require, but so that in every case the altered or

Appendx. substituted drain shall be as effectual for the use of the person entitled thereto as the drain previously used.

By section 58 of the Metropolis Management Act, 1862, vestries and local boards may continue the sewers outside the limits of the metropolis.

* * * * *

Where works interfere with any ancient mill, &c., compensation to be made, or rights therein purchased.

86. Provided also, that where any work by any vestry or district board done or required to be done in pursuance of the provisions of this Act interferes with or prejudicially affects any ancient mill, or any right connected therewith, or other right to the use of water, full compensation shall be made to all persons sustaining damage thereby, in manner hereinafter provided, or it shall be lawful for the vestry or board, if they think fit, to contract for the purchase of such mill, or any such right connected therewith, or other right to the use of water; and the provisions of this Act with respect to the purchases by the vestry or board hereinafter authorised shall be applicable to every such purchase as aforesaid.

The earlier part of this section as to cleansing ditches has been repealed and re-enacted with additions in section 43 of the Public Health (London) Act, 1891, *post*.

* * * * *

Owners, &c., to remove future projections, on notice from vestry or district board.

119. If any porch, shed, projecting window, step, cellar door, or window, or steps leading into any cellar or otherwise, lamp, lamp post, lamp iron, sign, sign post, sign iron, showboard, window shutter, wall, gate, fence, or opening, or any other projection or obstruction placed or made against or in front of any house or building after the commencement of this Act, shall be an annoyance, in consequence of the same projecting into or being made in or endangering or rendering less commodious the passage along any street in their parish or district, it shall be lawful for the vestry or district board to give notice in writing to the owner or occupier of such house or building to remove such projection or obstruction, or to alter the same, in such manner as the vestry or board think fit; and such owner or occupier shall within fourteen days after the service of such notice upon him remove such projection or obstruction, or alter the same in the manner directed by the vestry or board; and if the owner or occupier of any such house or building neglect or refuse, within fourteen days after such notice, to remove such projection or obstruction, or to alter the same, in the manner directed by the vestry or board, he shall forfeit any sum not exceeding five pounds, and a further sum not exceeding forty shillings for every day during which such projection or obstruction continues after the expiration of such fourteen days from the time when he may be convicted of any offence contrary to the provisions hereof.

Penalty for neglect.

Vestry or district board may remove existing projections, and make compensation for the same.

120. It shall be lawful for every vestry and district board, if any projection or obstruction which has been placed or made against or in front of any house or building in any such street(a) before the commencement of this Act shall be an annoyance as aforesaid, to cause the same to be removed or altered as they think fit: Provided always, that the vestry or board shall give notice in writing of such intended removal or alteration to the owner or occupier against or in front of whose house or building such projection or obstruction shall be, seven days before such removal or alteration shall be commenced, and shall

make reasonable compensation to every person who shall incur any loss or damage by such removal, excepting in cases where the obstruction or projection may now be removable under any Act, in which case no compensation shall be made. Appndx.

(a) That is a street within their parish or district.

A piece of land in front of houses between a footway and carriageway used by the public, but also by the occupiers of the houses, was held not to be a street within the meaning of these sections. *Le Neve v. Vestry of Mile End Old Town*, 27 L. J. Q. B. 208.

These sections have been held to repeal impliedly 57 Geo. 3, c. xxix., s. 72. See *Fortescue v. St. Matthew, Bethnal Green* [1891], 2 Q. B. 170. Cf., *St. Mary, Islington v. Goodman*, 23 Q. B. D. 154.

* * * * *

Duties and Powers of Metropolitan Board of Works.

135. The sewers mentioned in Schedule (D.) to this Act, being the main sewers now vested in the Commissioners of Sewers of the city of London and in the Metropolitan Commissioners of Sewers respectively, with the walls, defences, banks, outlets, sluices, flaps, penstocks, gullies, grates, works, and things thereunto belonging, and the materials thereof, with all rights of way and passage used and enjoyed by such commissioners respectively over and to such sewers, works, and things, and all other rights concerning or incident to such sewers, works, and things, shall be vested in the Metropolitan Board of Works, and such Board shall make such sewers and works as they may think necessary for preventing all or any part of the sewage within the metropolis from flowing or passing into the river *Thames* in or near the metropolis . . . (a) and shall also make all such other sewers and works, and such diversions or alterations of any existing sewers or works vested in them under this Act, as they may from time to time think necessary for the effectual sewerage and drainage of the metropolis, and shall discontinue, close up, or destroy such sewers for the time being vested in them under this Act as they may deem unnecessary, and such Board shall from time to time repair and maintain the sewers so vested in them, or such of them as may not be discontinued, closed up, or destroyed as aforesaid; and for the purposes aforesaid such Board shall have full power and authority to carry any such sewers or works through, across, or under any turnpike road, or any street or place laid out as or intended for a street, as well beyond as within the limits of the metropolis, or through or under any cellar or vault under the carriageway or pavement of any street, and into, through, or under any lands whatsoever within or beyond the said limits, making compensation for any damage done thereby as hereinafter provided, and all sewers and works from time to time made by the said Board shall vest in them; and the said Board shall cause the sewers vested in them to be constructed, covered, and kept so as not to be a nuisance or injurious to health, and to be properly cleared, cleansed, and emptied, and for the purpose of clearing, cleansing, and emptying the same they may construct and place, either above or under ground, such reservoirs, sluices, engines, and other works as may be necessary, and may cause the sewage and refuse from such sewers to be sold or disposed of as they may see fit, but so as not to create a nuisance, and the money arising thereby shall be applied towards defraying the expenses of such Board.

(a) Words omitted have been repealed.

Appendx.

Compensation.—The compensation is to be assessed and recovered as provided by sections 225 and 226, *post*, and the principles, and to a large extent the procedure, laid down under the Lands Clauses Acts are adopted. See the notes to sections 63 and 68 of the Lands Clauses Act, 1845, *ante*, pp. 111 and 129, for the principles of compensation when lands are taken or injuriously affected. The erection of a hoarding in a street while sewers are being made which renders access to premises less convenient, gives no ground for compensation. *Herring v. Metropolitan Board of Works*, 34 L. J. M. C. 229.

In making and laying sewers under this Act, it is not necessary for the authority to purchase the land before proceeding to carry out the works; they may enter upon the land and construct the works. See the notes to the Public Health (Support of Sewers) Act, 1883, *ante*, p. 551, and *Peters v. Carson*, 7 M. & G. 548; *Lister v. Lobley*, 7 Ad. & E. 124; *North London Railway Company v. Metropolitan Board of Works*, 28 L. J. Ch. 909. This power is not controlled by the power to purchase land given by sections 150–153, *post*. *Hughes v. Metropolitan Board of Works*, 9 W. R. 517.

If a sewer is properly constructed and managed there is no remedy for subsequent damage to adjoining land by flooding. *Hammond v. Vestry of St. Pancras*, L. R. 9 C. P. 316; *Dixon v. Metropolitan Board of Works*, 7 Q. B. D. 418. If there has been negligence, the remedy will be by action.

If support is required for a sewer from adjacent lands, it was held that compensation should be made in respect thereof before such a right can be acquired. *Metropolitan Board of Works v. Metropolitan Railway Company*, L. R. 3 C. P. 612.

Under the rule laid down in *In re Corporation of Dudley*, 8 Q. B. D. 86, it will probably be presumed that such support is conferred by statute and that the landowner has a remedy by claiming compensation, but that he will be liable for damages if he injure the sewer. See *Normanton Gas Company v. Pope*, 52 L. J. Q. B. 629, and see notes to the Public Health (Support of Sewers) Act, 1883, *ante*, p. 553.

The Metropolis Management Act, 1858 (21 & 22 Vict. c. 104), s. 2, extended the powers of this section so as to enable the council to erect works on the bed of the Thames, with the consent of the Admiralty. See *Bromley v. Metropolitan Board of Works*, 33 L. J. C. P. 233.

* * * *

Auxiliary Powers common to the Metropolitan Board of Works and to Vestries and District Boards.

* * * *

Power to boards and vestries to purchase lands, &c., for the purposes of this Act.

150. It shall be lawful for the Metropolitan Board of Works and every district board and vestry to purchase, or to take on lease for such term as they may think fit, any land, or any right or easement in or over any land which they may deem necessary or expedient for the formation or protection of any works which they are authorised to execute under this Act, also any offices and other buildings, yards, stations, or places for deposit of refuse, materials, and things, or any land for the erection and formation of such offices and other buildings, yards, stations, or places for deposit; and also to contract for the purchase, removal, or abatement of any milldam, pound, weir, bank, wall, lock, or other obstruction to the flow of water, whereby sewerage or drainage is interrupted or impeded, and for the purchase of any land, or any right or easement in or over any land, which it may be necessary or expedient to purchase to prevent the obstruction of sewerage or drainage; and also to purchase or take on lease as aforesaid the whole

or any part of any streams or springs of water, or any rights therein, which appears to them necessary to acquire and use for the purposes of cleansing sewers and drains and the other purposes of this Act, or any land which is deemed by them advisable to purchase or take on lease for the purpose of drawing or obtaining water from springs, or by sinking of wells, and for making and providing reservoirs, tanks, aqueducts, watercourses, and other works, or for any other purpose connected with the works for obtaining such supply of water as aforesaid: Provided always, that nothing herein contained shall authorise the said Metropolitan Board, or any district board or vestry, to use or permit to be used any such works for the purpose of carrying water by supply pipes into any house or factory for domestic, manufacturing, or commercial purposes.

Appndx.
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The council may also purchase lands for making roads and accommodation works, see Metropolitan Management Act, 1862, *post*.

151. For the purpose of enabling the said Metropolitan Board, and every district board and vestry, to obtain any land, or any right or easement in or over any land, which they respectively may require for the purposes of this Act, "the Lands Clauses Consolidation Act, 1845," except the provisions of that Act with respect to the recovery of forfeitures, penalties, and costs, shall, subject to the provisions herein contained, be incorporated with this Act; and the provisions of the said Act so incorporated with this Act which would be applicable in the case of a purchase of any land shall be applicable in the case of the purchase of a right or easement in or over any land; and for the purposes of this Act the expression "the promoters of the undertaking," wherever used in the said Lands Clauses Consolidation Act, shall mean the Metropolitan Board, or the district board or vestry, acting under the provisions of the said Act and this Act, as the case may be.

Certain provisions of 8 & 9 Vict. c. 18 incorporated with this Act.

152. Provided always, that the provisions of the said Lands Clauses Consolidation Act "with respect to the purchase and taking of lands otherwise than by agreement" shall not be incorporated with this Act, save for enabling the Metropolitan Board of Works, to take land, or any right or easement in or over land, for the purpose of making any sewers or works for preventing the sewage or any part of the sewage within the metropolis from passing into the *Thames* in or near the metropolis, or otherwise for the purpose of the sewerage or drainage of the metropolis: Provided also, that no land, or right or easement in or over land, for the purposes aforesaid, shall be taken compulsorily by the said board, without the previous consent in writing of one of Her Majesty's principal Secretaries of State.

Lands not to be taken compulsorily, except by Metropolitan Board with consent of Secretary of State.

153. The Metropolitan Board of Works, before applying for the consent of the Secretary of State for taking land, or any right or easement in or over land, compulsorily, as aforesaid, shall publish, once at the least in each of four consecutive weeks, in one of the daily newspapers published in the metropolis, an advertisement describing the nature of the works in respect of which the land, right or easement, is proposed to be taken, naming a place where a plan of the proposed works is open for inspection at all reasonable hours, and stating the quantity of land or the particulars of the right or easement that they require for the purpose of such works, and shall serve a notice on the

Previous notice to be given.

COMPENSATION IN THE COUNTY OF LONDON.

owners or reputed owners, lessors, or reputed lessors, and occupiers of the land intended to be taken, or of the land in or over which such right or easement is intended to be taken, such service to be made four weeks previously to the application to such Secretary of State, and such notice shall state the particulars of the land, right, or easement so required, and that the Metropolitan Board are willing to treat for the purchase thereof, and as to the compensation to be made for the damage that may be sustained by reason of the proposed works.

The effect of these notices is not clear, nor does it appear whether they are to take the place of a notice to treat under section 18 of the Lands Clauses Act, 1845, *ante*, p. 33. If they are similar to the notices to be served before applying for a provisional order as under section 176 of the Public Health Act, 1875, *ante*, p. 511, they would have no effect upon the legal right of the parties. On the other hand, if the Secretary of State gives his consent, they may be regarded as having the same effect as a notice to treat. Cf., *Birk v. Vestry of St. Marylebone*, 20 L. T. (N.S.) 697, and *Burges v. Bristol Sanitary Authority*, 50 J. P. 455.

Power to
dispose of
lands or
property
not
wanted.

154. The Metropolitan Board of Works, and any district board or vestry, may sell and dispose of any land purchased by them under this Act, and any property whatsoever vested in them under this Act, which it may appear to them may be properly sold or disposed of; and for completing and carrying any such sale of any land into effect such board may make and execute a conveyance of the land sold and disposed of as aforesaid unto the purchaser, or as he shall direct, and such conveyance shall be under the seal of the said board or vestry; and the word "grant" in such conveyance shall have the same operation as by the said Lands Clauses Consolidation Act, 1845, is given to the same word in a conveyance of lands made by the promoters of the undertaking; and a receipt under the seal of the said board or vestry shall be a sufficient discharge to the purchaser of any such land or any other such property as aforesaid for the purchase money in such receipt expressed to be received; and the money arising from such sale of any land purchased under this Act, and (except as hereinafter otherwise provided) of any such property, shall be applied in aid of the rate out of which the expenses of the purchase of such land or providing such property have been or are authorised to be defrayed under this Act; and the money arising from the sale of any property vested in any such board or vestry under this Act, and which, before becoming so vested, was vested in any commissioners or other body, or in any officer of any commissioners or other body, or in any surveyor of highways, shall be applied in or towards the discharge of any debts or liabilities for the discharge whereof rates are by this Act authorised to be raised in the parish, or part, to the commissioners or other body for the management of the paving, lighting, or cleansing whereof such property may have belonged before the commencement of this Act, and, subject as aforesaid, shall be applied in aid of such rate to be raised under this Act in such parish or part as to the board or vestry disposing of such property may seem just; and any such board or vestry may let any land purchased by or vested in them under this Act, and which for the time being is not required for the purposes thereof, in such manner and on such terms as such board or vestry may seem fit.

155. Provided always, that where any land or any right or easement in or over land is purchased by the said Metropolitan Board, or any

Owners of
land may

district board or vestry, under this Act, it shall be lawful for the owners of or parties entitled to sell or convey such land, right, or easement to reserve upon the sale thereof to such board or vestry in and by the conveyance such right or pre-emption to the person for the time being entitled to the land (if any) from which the land so purchased was severed, or in or over which such right or easement is granted, as is provided by sections 128, 129, and 130 of the said Lands Clauses Consolidation Act; but, except where such right or pre-emption is so reserved, there shall be no such right, notwithstanding the incorporation of the said Lands Clauses Consolidation Act with this Act.

Appndx.
on sale
reserve a
right of
pre-emp-
tion.

* * * * *

Appeals.

211. Any person who deems himself aggrieved by any order of any vestry or district board in relation to the level of any building, or any order or Act of any vestry or district board in relation to the construction, repair, alteration, stopping or filling up, or demolition of any building, sewer, drain, watercloset, privy, ashpit, or cesspool, may, within seven days after notice of any such order to the occupier of the premises affected thereby, or after such Act, appeal to the Metropolitan Board of Works against the same; and all such appeals shall stand referred to the committee appointed by such board for hearing appeals as herein provided; and such committee shall hear and determine all such appeals, and may order any costs of such appeals to be paid to or by the vestry or district board by or to the party appealing, and may, where they seem fit, award any compensation in respect of any Act done by any such vestry or district board in relation to the matters aforesaid; provided that no such compensation shall be awarded in respect of any such Act which may have been done under any of the provisions of this Act on any default to comply with any such order as aforesaid, unless the appeal be lodged within seven days after notice of such order has been given to the occupier of the premises to which the same relates.

Power to
appeal
against
orders and
acts of
vestries
and district
boards in
relation to
construction
of works.

* * * * *

225. In every case where the amount of any damage, costs, or expenses is by this Act directed to be ascertained or recovered in a summary manner, or the amount of any damage, costs, or expenses is by this Act directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount shall, in case of dispute, be ascertained and determined by and shall be recovered before two justices; and the amount of any compensation to be made under this Act by the said Metropolitan Board, or any vestry or district board, shall, unless herein otherwise provided, be settled, in case of dispute, by and shall be recovered before two justices, unless the amount of compensation claimed exceed fifty pounds, in which case the amount thereof shall be settled by arbitration, according to the provisions contained in the Lands Clauses Consolidation Act, 1845, which are applicable where questions of disputed compensation are authorised or required to be settled by arbitration.(a)

Compensation,
damage,
and expenses,
how to be
ascertained and
recovered.

Appendix.
Method of
Proceeding
Before jus-
tices in
questions
of
damages,
&c.

226. Where the amount of any compensation, or of any damage, costs, or expenses, is to be determined by or to be recovered before two justices, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before two justices, at a time and place to be named in such summons; and upon the appearance of such parties, or, in the absence of either of them, upon proof of due service of the summons, it shall be lawful for such two justices to hear and determine the matter, and for that purpose to examine such parties, or any of them, and their witnesses, on oath, and make such order as well as to costs as otherwise, as to them may seem just.

As to proceedings before justices, see the notes to sections 22 and 24 of the Lands Clauses Act, 1845, *ante*, pp. 55 and 59.

A metropolitan magistrate can exercise the powers of two justices. 2 & 3 Vict. c. 71, s. 14.

The method of settling compensation provided in these sections is followed in the later statutes, as, for example, the Public Health (London) Act, 1891, s. 43, *post*; the London Building Act, 1894, ss. 15 and 23. In the Metropolis Management (Thames River Prevention of Floods) Act, 1879, *post*, a different method is provided.

* * * * *

Proceed-
ings not
to be
quashed
for want
of form.

230. No Act, order, or proceeding in pursuance of this Act, or in relation to the execution thereof, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the superior Courts, except as herein specially provided.

This is subject to the qualification that a writ of *certiorari* will lie if the Court has acted without jurisdiction. See section 145 of the Lands Clauses Act, 1845, *ante*, p. 296, and notes thereto.

THE METROPOLIS MANAGEMENT ACT, 1862.

25 & 26 VICT. CAP. 102.

An Act to amend the Metropolis Local Management Acts.

[7th August, 1862.]

* * * * *

Power to
Metropo-
litan
Board to
take lands
for roads,
&c.

22. The compulsory powers of taking land given to the said Metropolitan Board(a) by the firstly-recited Act(b) and the "Lands Clauses Consolidation Act, 1845," shall, subject to the conditions and restrictions in the firstly-recited Act contained, extend and be applicable to the taking of any lands which they may require for the purpose of making convenient roads or ways to or in connection with any sewers or works vested or hereafter to be vested in the said Board, or which they may require for making roads or ways during the construction of any sewage works, or for spoil banks, or places of deposit of surplus earth or other materials in the execution of any such works.

(a) The London County Council.

(b) That is, the Metropolis Management Act, 1855, ss. 150—155, *ante*, p. 790.

* * * * *

Formation
and main-

25. It shall be lawful for the said Metropolitan Board to make and maintain any bridges, arches, culverts, passages, or roads over, under, or

by the sides of or leading to or from any sewage works constructed or to be constructed by them, which they may deem necessary and convenient for preserving the communications between lands through which the said works may have been or may be made or carried : Provided that it shall be lawful for the said Board to contract and agree with the owners and occupiers of lands to pay them, or any of them, compensation in lieu of making or maintaining such bridges or other works.

Appndx.

tenance of
bridges,
arches,
culverts,
&c.

These are accommodation works similar to what are required under the Railways Clauses Act, 1845, *ante*, p. 351, which act is not incorporated with this one. By section 24 the county council are bound to maintain these works.

* * * * *

32. Whereas it is in and by the firstly-recited Act provided that the Metropolitan Board of Works shall from time to time, in order to secure the efficient maintenance of the main and general sewerage of the metropolis, make such general or special orders as to them may seem proper for the guidance, direction, and control of the vestries of parishes and district boards in the levels, construction, alteration, maintenance, and cleansing of sewers in their respective parishes or districts, and for securing the proper connection and intercommunication of the sewers of the several parishes and districts, and their communications with the main sewers vested in the said Metropolitan Board, and generally for the guidance, direction, and control of vestries and district boards in the exercise of their powers and duties in relation to sewerage ; and all such orders shall be binding upon such vestries and boards : Be it enacted that whenever the said Metropolitan Board shall, in exercise of the said power, have ordered that any sewer or sewers vested in the vestry, district board, or other board acting for any parish or place comprised in the schedules of the firstly-recited Act, having control over the sewers in one parish, district, or part, shall, for the purpose of outfall or otherwise, be connected with any sewer or sewers vested in the vestry or district board of another parish, district, or part, or other body having control over the sewers in such parish, district, or part, it shall be lawful for the vestry, district board, or other body for the drainage of whose parish, district, or part such connection shall be required, and at whose instance and request such order shall have been made, to execute all necessary works as well within their own parish, district, or part as within any other parish, district, or part, which shall be specified in the said Order of the Metropolitan Board for effecting such connection : provided that every communication to be made by any vestry, district board, or other body with any sewer out of their own parish, district, or part, shall be made under the supervision and to the satisfaction of the said board, vestry, or other body having control over such last-mentioned sewer ; and where it shall appear to the said Metropolitan Board to be equitable and just, under the circumstances of the case, that any vestry, board, or other body so connecting their sewers with the sewers vested in another vestry, district board, or other body, should pay such last-mentioned vestry, board, or other body any compensation or remuneration whether in one sum or by yearly or other payments, for the use of their sewer, it shall be lawful for the said Metropolitan Board to order and direct payment of such compensation or remuneration accordingly ; and the vestry, board, or other body to whom such payment shall be directed to be made may recover the same from the vestry, board, or body directed

Communi-
cations
between
sewers in
different
parishes or
districts,
and pay-
ment of
compen-
sation, &c.,
in con-
sideration
thereof.

COMPENSATION IN THE COUNTY OF LONDON.

Appendix.
Works affecting railway or canal to be submitted to companies.

by such order to make such payment either by action at law or before a justice of the peace in a summary manner.

* * * * *

34. Where any works authorised by this or the recited Acts will interfere with any railway or canal, the board or vestry proposing to construct such works shall, before commencing the same, give notice in writing of their intention so to do to the company owning such railway or canal, and shall, together with such notice, deliver a plan and section showing the nature of such interference; and if within seven days after the receipt of such notice the company shall by writing, addressed to the board or vestry, object to the manner in which it is intended to interfere with such railway or canal respectively, on account of the probable interruption or endangering of the traffic thereon, the same works shall be commenced; and it shall thereupon be referred to an engineer, to be appointed by the Board of Trade, on the application of either party, to determine the manner of executing the said works; and the determination come to by such engineer shall be binding on both parties.

This section restricts the powers given by sections 69 and 135 of the Metropolis Management Act, 1855, which allows sewers to be made upon any land.

Line of railway not to be altered.

35. Provided always, that it shall not be lawful for any board or vestry to alter the level of any railway or canal, unless with the consent of the company owning the same respectively, or, if that be refused, with the consent of the Board of Trade; and provided also, that nothing in this Act contained shall take away or affect the right of any railway or canal company to compensation for the taking or injuriously affecting of any land or property of such company, or for or by reason of the interruption of any traffic on their railway or canal, or for any damages, costs, or expenses which such company may be required to pay in consequence of such interruption.

* * * * *

THE METROPOLITAN COMMONS ACT, 1866.

29 & 30 VICT. CAP. 122.

An Act to make provision for the improvement, protection, and management of commons near the metropolis. [10th August, 1866.]

* * * * *

Estates or rights not to be taken away or affected except by consent,

15. No estate, interest, or right of a profitable or beneficial nature in, over, or affecting a common shall, except with the consent of the person entitled thereto, be taken away, or injuriously affected by any scheme, without compensation being made or provided for the same; and such compensation shall, in case of difference, be ascertained and provided in the same manner as if the same compensation were for the compulsory purchase and taking or the injurious affecting of lands under the

provisions of the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860.

This Act which has been amended by the Metropolitan Commons Acts of 1869 and 1878 enables the local authority—the county council, vestry, or district board—to prepare a scheme for the management, draining, levelling, and improvement of commons within the metropolitan police district. The scheme is to state the rights of persons affected. It has been held that the right to a sign post to a public-house and to maintain and repair it was a beneficial right within the meaning of this section. *Hoare v. Metropolitan Board of Works*, L. R. 9 Q. B. 296. As to the right of the lord of the manor to dig gravel, see *Attorney-General v. Tyssen-Amherst*, in the “Times,” April 2nd, 1879.

without compensation. Settlement of compensation under Lands Clauses Act.

* * * * *

METROPOLIS MANAGEMENT (THAMES RIVER PREVENTION OF FLOODS) AMENDMENT ACT, 1879.

42 & 43 VICT. CAP. CXCVIII.

To amend the Metropolis Management Act, 1855, and the Acts amending the same, so far as relates to the protection of the Metropolis from floods and inundations caused by the overflow of the river Thames and for other purposes. [11th August, 1879.]

* * * * *

2. In the construction of this Act the following words and expressions have the following meanings, unless excluded by the subject or context ; (that is to say,) Interpretation of terms.

The expression “the principal Act” means the Metropolis Management Act, 1855, as amended by the Metropolis Management Amendment Act, 1856, and the Metropolis Management Amendment Act, 1862 : 19 & 20 Vict. c. 112. 25 & 26 Vict.

The expression “the Secretary of State” means one of Her Majesty’s Principal Secretaries of State : c. 102.

The expression “the Board” means the Metropolitan Board of Works :

The expression “person” includes any corporation, whether aggregate or sole :

The expression “river Thames” includes the rivers, streams, and watercourses within the flow and re-flow of the tides of the said river within the limits of this Act :

The expression “bank” and the expression “dam” includes any bank, wall, fence, wharf, dock, lock, gate, sluice, dam, or defence, or appliance, whether of a moveable, temporary, fixed, or permanent character, for the protection of lands within the limits of this Act from floods or inundations caused by the overflow of the river Thames :

The expression “flood works” means the entire or partial construction, alteration, reconstruction, in the same or any altered position

Appendix.

of any bank, and the repairing, raising, strengthening, improvement, or removal of any bank, and the enlargement, contraction, raising, lowering, arching over, improvement, or alteration of any sewer, channel, or watercourse, and the discontinuance, closing up, or destruction of any such sewer, channel, or watercourse necessary for the protection of lands within the limits of this Act from floods or inundations caused by the overflow of the river Thames :

The expression "lands" includes messuages, buildings, erections, banks, lands, tenements, and hereditaments of any tenure and rights and easements in, over, under, or in respect of the same :

The expression "street," in addition to the meaning assigned to the same term by the principal Act, includes the carriageway of any turnpike road and any county bridge and any place laid out as a street :

The expression "premises" includes lands and streets :

The expression "owner" means (except where otherwise expressly provided) the person for the time being receiving the rackrent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent, and includes any commissioners, trustees, or other persons or person in whom the premises in connection with which the said word is used are vested, or who are charged with the control or management of the same.

* * * * *

Powers for execution of flood works.

14. The board, the Commissioners of Sewers of the city of London, the vestry of any parish, the board of works for any district, or any owner of premises, in the execution of any flood works, in accordance with the provisions of this Act, may carry the same through, along, across, or under any street, or through, along, across, or under any cellar or vault which may be under the pavement of any street, and into, through, along, across, upon, or under any lands, and may for such purpose enter upon any such cellar, vault, and lands, and any premises in the vicinity of or adjoining the same or connected therewith, compensation being made for any damage done thereby in manner provided by this Act.

Powers of board to take lands.

15. Where for the purposes of executing any flood works in accordance with the provisions of this Act it is in the opinion of the board necessary that the Commissioners of Sewers of the city of London, the vestry of any parish, the board of works for any district, or any owner of premises liable under this Act to provide for the execution of such works, should take and use any premises not vested in them or subject to their control or management, or of which they or he are or is not the owner, or that the board for the purpose of executing such works in place of them or him should take and use such last-mentioned premises, then and in every such case the board may take and use any such last-mentioned premises which may be required for the purpose of executing such works, and the board shall for such purpose have and may exercise all the powers of taking land conferred upon the board by the principal Act in relation to the taking of lands for works for the purpose of the sewerage or drainage of the metropolis.

For the purposes of notices required by the principal Act to be served **Appndx.**
upon owners or reputed owners of lands before applying for the consent
of the Secretary of State to the taking of lands compulsorily, the term
“owner” shall, in relation to premises to be taken for the purposes of
this Act, have the same meaning as in the Lands Clauses Consolidation **8 & 9 Vict.**
Act, 1845. **c. 18.**

When the Board have taken any premises under the authority of this
Act, they may by writing under their seal authorise the Commissioners
of Sewers, the vestry of any parish, the board of works for any district,
and any owner to take or use the same for the execution of any flood
works in accordance with the provisions of this Act, and thereupon such
commissioners, vestry, district board, or owner may for such purpose
take and use such premises or any of them, and shall in respect of the
same have all and the same powers as though they or he were or was
the board.

16. For the purpose of executing any works under the authority of this Act, the board, the Commissioners of Sewers of the City of London, the vestry of any parish, the board of works for any district, and any owner of premises liable to execute flood works, may, subject to the provisions of this Act, construct any such works through, along, over, or under the bed and soil and banks and shores of the river Thames: Provided always, that no such work shall be constructed in or upon the bed or shore of the river Thames as defined by the Thames Conservancy Act, 1857, except with the permission of the conservators of the said river, and under a license to be granted by the said conservators in accordance with the provisions of the said last-mentioned Act. **Power to construct flood works on the shores and bed of the river Thames. 20 & 21 Vict. c. cxlvii.**

* * * * *

18. For the purpose of giving effect to the provisions of this Act, any engineer, surveyor, district surveyor, or other person duly authorised in writing by the Board or by the Commissioners of Sewers of the City of London, or by the vestry of any parish, or by the board of works for any district, or by any owner of premises liable to execute flood works, or the owner of such premises, may enter upon any premises upon which any works executed or to be executed by them or him in pursuance of this Act are or will be situate, for the purpose of inspecting or taking surveys of the same, at any time between the hours of nine o'clock in the forenoon and four o'clock in the afternoon; and if any person during such hours refuses to allow such engineer, surveyor, district surveyor, or other officer or person, or any such owner, to enter upon any such premises, or obstructs him in the making of such inspection or survey, such person shall be liable to a penalty not exceeding ten pounds, and to a further penalty not exceeding five pounds for every day after the first day during which he so continues to act in contravention of this Act. **Power to inspect lands.**

* * * * *

COMPENSATION.

25. Any person or body who claims compensation for any damage caused by the execution of any flood works under the authority of this Act, or in respect of any lands or any interest in lands taken or used for the purposes of or injuriously affected by the execution of flood works **Mode of ascertaining amount of**

Appendix.
—
compensation
for
damages
caused by
execution
of flood
works, &c.

under the authority of this Act, may claim such compensation from the board ; and if such person or body and the board do not agree with respect to such claim, then, and in every such case the validity of such claim and the amount of such compensation (if any) payable in respect thereof shall, on the application of either party, be determined by arbitration by the standing arbitrator hereinafter referred to, subject to and in accordance with the provisions of this Act, and such provisions shall be in substitution for the provisions with respect to the tribunal for determining the settlement of questions of disputed compensation contained in the principal Act or any Act incorporated therewith, and the amount of compensation payable in respect of any such claim, when agreed upon or determined as aforesaid, shall be paid by the board as though the same were compensation payable in respect of lands taken under the authority of the principal Act : Provided always, that the owner or occupier of any lands shall not be entitled to any compensation on account of the execution by himself or by any other person or body of any flood works for which such owner is in pursuance of this Act liable to provide upon any lands of which he is the owner or occupier unless after the execution of such lands are permanently injuriously affected thereby, and then only to the extent of such permanent injury.

Powers of
standing
arbitrator
as to
amount of
compensation.

26. When any claim is made for compensation under the authority of this Act the standing arbitrator shall have power to decide upon the validity of such claim, and to determine what (if any) compensation shall be made to the person or body making such claim, and in adjudicating upon such claims the standing arbitrator shall have regard to the nature of the flood works with respect to which the claim has arisen, the manner in which the same have been executed, the benefit (if any) which has accrued or which may reasonably be expected to accrue to the person or body making such claim by reason of the execution of such works, and generally to all the circumstances of the case ; and the standing arbitrator may, in determining the compensation to be paid for any lands or interest in lands taken or injuriously affected under the authority of this Act, according as he shall think fit, include in or exclude from such compensation an allowance in respect of the compulsory powers of this Act, and he may make such order as to the payment of the costs of such arbitration wholly or in part by the board or the claimant, as he shall think just.

Appointment
of
standing
arbitrator.

27. For the purpose of determining the validity of claims for compensation and the amount of compensation payable in respect of any claim declared to be valid by this Act directed to be settled by arbitration, there shall be an arbitrator, in this Act called the "standing arbitrator," appointing and acting as follows : (that is to say,)

(1.) The Secretary of State shall, before the 31st day of December in the year 1879, and before the same day of December in every third succeeding year, by writing under his hand appoint a standing arbitrator and fix the remuneration to be paid to him, and every person so appointed shall continue in office for three years from such 31st day of December in such years respectively :

(2.) Any standing arbitrator may be removed from his office by the Secretary of State by writing under his hand :

(3.) If any standing arbitrator during his term of office dies or resigns, or is removed from office, the Secretary of State shall in manner aforesaid, within one month after notice of his death or resignation or removal, appoint another person to be a standing arbitrator in his place, and the person so appointed shall continue in office as long only as the person in whose place he is appointed would have been entitled to continue in office :

Appndx.
—

(4.) The remuneration of the standing arbitrator shall be paid by the Board.

Before any standing arbitrator enters upon the duties of his office he shall, in the presence of a justice, make and subscribe the following declaration ; (that is to say,)

"I, A. B., do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine all matters which may from time to time be referred to me under the provisions of the Metropolis Management (Thames River Prevention of Floods) Amendment Act, 1879.
A. B."

And if the standing arbitrator having made such declaration wilfully acts contrary thereto, he shall be guilty of a misdemeanor.

If any reference is pending before a standing arbitrator at the time when he resigns or goes out of office by effluxion of time, it shall nevertheless be proceeded with by him, and his decision shall have the like effect as if he had not resigned or gone out of office.

28. The standing arbitrator shall appoint a place and time for the hearing of any matter coming before him, and shall cause six days' previous notice thereof to be given in such manner as he shall think proper, and at such place and time shall consider such matter and hear the parties appearing by themselves, their counsel, solicitors, or agents, and take evidence, and the standing arbitrator may administer an oath or affirmation (where an affirmation in lieu of an oath would be admitted in a court of justice) to any person before hearing any evidence from him, and may admit the affidavit or declaration of any person.

Proceed-
ings before
standing
arbitrator.

The standing arbitrator, on the application of any party, may by summons require the attendance before him of any person to be examined as a witness before him, and may, on the like application, by summons require any person to bring before him all books, papers, and writings in his possession, custody, or control relating to any matter to be inquired into by the standing arbitrator.

Every person so summoned shall attend the standing arbitrator and answer all questions touching the matter to be inquired into, and bring and produce all papers, books, and writings required according to the tenor of the summons ; and every such person not attending in obedience to such summons, or refusing to answer such questions, or failing to bring or produce such papers, books, and writings as aforesaid, shall be liable, if the standing arbitrator shall so order, to a penalty not exceeding fifty pounds : Provided that any person so summoned shall not be bound to obey the summons unless a reasonable sum is first paid or tendered to him for his expenses.

Appendx. — If any person, on examination on oath or affirmation before the standing arbitrator, or in any affidavit or declaration used before the standing arbitrator, wilfully gives false evidence, he shall be deemed guilty of perjury.

In case any person fail to appear at the time and place appointed for the hearing of any matter by the standing arbitrator, the standing arbitrator may proceed with the hearing of such matter in the absence of such party.

The decision of the standing arbitrator in any arbitration under this Act shall be final and binding upon the parties to such arbitration.

No award made by the standing arbitrator in accordance with this Act shall be set aside for any irregularity or informality.

* * * * *

THE PUBLIC HEALTH (LONDON) ACT, 1891.

54 & 55 VICT. CAP. 76.

An Act to consolidate and amend the Laws relating to Public Health in London.
[5th August, 1891.]

The Public Health Act, 1875, does not apply to London except certain sections which by this Act are made applicable. By section 109 of this Act the sections of the Public Health Act, 1875, dealing with the purchase of land (sections 175—178), with arbitration (179—181), and with compensation (section 308), are with others extended to the parish of Woolwich.

Section 99 defines the authorities to carry out this Act. They correspond with those carrying out the Metropolis Management Acts. The only sections which deal with compensation for injury to land appear to be sections 43 and 44, which reproduce with additions sections 86 and 88 of the Metropolis Management Act, 1855.

Sanitary authority to cause offensive ditches, drains, &c., to be cleansed or covered.

43. (1.) Every sanitary authority—

- (a.) Shall drain, cleanse, cover, or fill up or cause to be drained, cleansed, covered, or filled up, all ponds, pools, open ditches, drains, and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health which may be situate in their district; and
- (b.) Shall cause notice to be served on the person causing any such nuisance, or on the owner or occupier of any premises whereon the same exists, requiring him within the time specified in such notice to drain, cleanse, cover, fill up such pond, pool, ditch, drain, or place, or to construct a proper drain for the discharge of such filth, water, matter, or thing, or to execute such other works as the case may require.

(2.) If the person on whom such notice is served fails to comply therewith, he shall be liable to a fine not exceeding five pounds, and a further fine not exceeding forty shillings for each day during which the offence continues; or the sanitary authority, if they think fit, in lieu of

proceeding for a fine, may enter on the premises and execute such works as may be necessary for the abatement of the nuisance, and may recover the expenses thereby incurred from the owner of the premises. Provided that :—

Appndx.

- (a.) The sanitary authority, where they think it reasonable, may defray all or any portion of the said expenses, as expenses of sewerage are to be defrayed by that authority ; and
- (b.) Where any work which a sanitary authority does or requires to be done in pursuance of this section interferes with or prejudicially affects any ancient mill, or any right connected therewith, or other right to the use of water, the sanitary authority shall make full compensation to all persons sustaining damage thereby, in manner provided by the Metropolis Management Act, 1855 ; or, if they think fit, may purchase such mill, or any such right connected therewith, or other right to the use of water ; and the provisions of the said Act with respect to purchases by the sanitary authority shall be applicable to every such purchase as aforesaid.(a)

(a) See section 225 of the Metropolis Management Act, 1855, *ante*, p. 793.

(3.) Any person who thinks himself aggrieved by any notice or act of a sanitary authority under this section in relation to the construction, covering, filling up, or other alteration of any drain, may appeal to the county council, whose decision shall be final.

44. (1.) Every sanitary authority may provide and maintain public lavatories and ashpits and public sanitary conveniences other than privies, in situations where they deem the same to be required, and may supply such lavatories and sanitary conveniences with water, and may defray the expense of providing such lavatories, ashpits, and sanitary conveniences, and of any damage occasioned to any person by the erection or construction thereof, and the expense of keeping the same in good order, as if they were expenses of sewerage.

(2.) For the purpose of such provision the subsoil of any road, exclusive of the footway adjoining any building or the curtilage of a building, shall be vested in the sanitary authority.

"Sanitary convenience" includes urinals, waterclosets, earthclosets, privies, and any similar conveniences.

"Ashpit" means any ashpit, dust-bin, ash-tub, or other receptacle for the deposit of ashes or refuse matter.

Such conveniences cannot be erected in places where they will cause a nuisance. (*Biddulph v. Vestry of St. George's, Hanover Square*, 33 L. J. Ch. 411 ; *Vernon v. Vestry of St. James's, Westminster*, 16 Ch. D. 449 ; *Sellers v. Matlock Bath Local Board*, 14 Q. B. D. 928.) There appears to be no provision for paying compensation to anyone in respect of the subsoil of roads.

Appndx.

THE LONDON BUILDING ACT, 1894.

57 & 58 VICT. CAP. CCXII.

An Act to consolidate and amend the enactments relating to Streets and Buildings in London.
[25th August, 1894.]

"Street."
18 & 19

Vict.
c. 120,
s. 250.
25 & 26
Vict.
c. 102,
s. 112.

"Way."

"Road-
way."

41 & 42
Vict. c. 32,
s. 4.

* * * *

5. In this Act, unless the context otherwise requires—

(1.) The expression "street" means and includes any highway and road, bridge, lane, mews, footway, square, court, alley, passage, whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, mews, footway, square, court, alley, or passage.

(2.) The expression "way" includes any public road, way, or footpath, not being a street, and any private road, way, or footpath which it is proposed to convert into a highway, or to form, lay out, or adapt as a street.

(3.) The expression "roadway" in relation to any street or way means and includes the whole space open for traffic, whether carriage traffic and foot traffic or foot traffic only.

(4.) The term "centre of the roadway" means—

(a.) In relation to any [street] or way of which the centre of the roadway has been ascertained or defined by the council or the superintending architect previously to or after the commencement of this Act the centre of the roadway as so ascertained or defined.

(b.) In relation to any street or way of which the centre of the roadway shall not have been ascertained or defined by the council or the superintending architect where the roadway opposite the site of the building in question shall, since the twenty-second day of July, one thousand eight hundred and seventy-eight, have been widened the centre of the roadway as existing immediately before the date of such widening or where it shall not have been so widened the actual centre of the existing roadway ;

For the purpose of any enactment in this Act referring to the centre of the roadway [the superintending architect] may at any time define the line constituting the centre of the roadway in the case of a street formed or laid out after the eighteenth day of August, one thousand eight hundred and ninety, and the line so defined shall continue to be deemed the centre for such purpose, notwithstanding that the actual centre of the roadway may have become altered by reason of the roadway having been widened either on one side only or on both sides to an unequal extent.

"Pre-
scribed
distance."

(5.) The expression "the prescribed distance" means twenty feet from the centre of the roadway where such roadway is used for the purpose of carriage traffic, and ten feet from the centre

of the roadway where such roadway is used for the purposes of foot traffic only. **Appndx.**

- (6.) The expression "new building" means and includes—
 Any building erected after the commencement of this Act; Any building which has been taken down for more than half of its [cubical extent] and re-erected or commenced to be re-erected [wholly or partially on the same site] after the commencement of this Act;
 Any space between walls and buildings which is roofed or commenced to be roofed after the commencement of this Act.
- (15.) The expression "external wall" means an outer wall or vertical enclosure of any building not being a party wall.
- [(24.) The expression "cubical extent" applied to the measurement of a building means the space contained within the external surfaces of its walls and roof and the upper surface of the floor of its lowest storey.]

41 & 42
 Vict. c. 34,
 s. 4.
 "New
 building."
 18 & 19
 Vict.
 c. 122,
 s. 10.
 "External
 wall."
 "Cubical
 extent."

* * * * *

15. In any case where—

- (1.) The council(a) under this part(b) of this Act make it a condition of their sanction to—

(a.) The formation or laying out of any street for carriage traffic over land which either at the commencement of this Act or at any time within seven years previously has or shall have been occupied by buildings or by market gardens; or

(b.) The adaptation or use for carriage traffic of any street or way not previously so adapted or used

that the street or way shall be throughout or in any part of a greater width than forty feet; or

- (2.) The council determine that the prescribed distance from the centre of the roadway shall be greater than twenty feet;

the council shall be liable to pay to the owner of land or buildings required for such greater width or such greater prescribed distance compensation for the loss or injury (if any) sustained by him by such requirement. The amount of such compensation if not agreed within two months from the time of such condition being made or determination arrived at may (unless the council waive the condition or determination) be recovered in a summary manner, except where the amount of compensation claimed exceeds fifty pounds, in which case the amount thereof shall be settled by arbitration, according to the provisions contained in the Lands Clauses Acts, which are applicable where questions of disputed compensation are authorised or required to be settled by arbitration, and for that purpose those Acts so far as applicable shall be deemed to be incorporated with this Act:

Provided always, that within two months from the time of such condition or determination being made or arrived at, if the amount of compensation has not been settled before the expiration of such time, it shall be lawful for the council to waive such condition or determination. Provided also, that if the council waive such condition or determination they shall pay to the owner the reasonable costs, charges, and expenses

Waiver of
 conditions.

Appndx. incurred by him in consequence of such condition or determination, and in connexion with the negotiations for the settlement of the amount of compensation.

For the purpose of this section the expression "owner" has the same meaning as in the Lands Clauses Acts.(c)

(a) The county council.

(b) Part 2. This section refers to the powers under sections 12 and 13.

(c) See sections 3 and 7 of the Lands Clauses Act, 1845, *ante*, pp. 6 and 19. The method of ascertaining the compensation is the same as is provided by section 225 of the Metropolis Management Act, 1855, *ante*, p. 793. The Arbitration Clauses of the Lands Clauses Act, 1845, are sections 25—37, *ante*, pp. 61—80.

The statutory powers as to the line of buildings do not apply to buildings for public purposes authorised by Act of Parliament or provisional order. *City and South London Railway Company v. London County Council* (1891), 2 Q. B. 513; *London County Council v. London School Board* (1892), 2 Q. B. 606.

23. (1.) In case any building or structure which shall, in any part thereof, project beyond the general line of buildings in a street or beyond the front of the building wall or railway, on either side thereof shall at any time be taken down to an extent exceeding one-half of the cubical extent of such building or structure, or shall be destroyed by fire or other casualty, or demolished, pulled down or removed from any other cause to the extent aforesaid, it shall be lawful for the council to require the same building or structure, or any new building or structure proposed to be erected on the site, or any part of the site thereof to be set back to such a line, and in such manner as the council shall direct.

(2.) The council shall make compensation to the owner of such building for any damage and expenses which he may sustain and incur thereby, and the amount of such compensation if not agreed between the council and the parties concerned, shall be recovered in a summary manner, except where the amount of compensation claimed exceeds fifty pounds, in which case the amount thereof shall be settled by arbitration according to the provisions contained in the Lands Clauses Acts, which are applicable where questions of disputed compensation are authorised or required to be settled by arbitration, and for that purpose those Acts as far as applicable shall be deemed to be incorporated with this Act. For the purpose of this section the expression "owner," has the same meaning as in the Lands Clauses Acts.

The method of assessing the compensation is the same as in section 15, *supra*, and section 225 of the Metropolis Management Act, 1855, *ante*, p. 793. Compensation was given in respect of the same matter by section 74 of the Metropolis Management Act, 1862, which is repealed by this Act.

PRECEDENTS.

Appndx.

[The precedents have been arranged as far as possible according to the order of the sections of the Lands Clauses Act, 1845.]

NO. 1.—FORMAL NOMINATION OF TWO SURVEYORS TO DETERMINE THE VALUATION OF LANDS PURCHASED AND TAKEN FROM ANY PERSON UNDER ANY DISABILITY OR INCAPACITY UNDER SECTION 9 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 25).

Whereas the company have in pursuance of the Act, 18 , and the Acts incorporated therewith, agreed to purchase and take the lands and hereditaments described in the schedule hereto, and coloured red on the plan annexed to the said schedule. And whereas the said lands belong to *A. B.*, a party under disability or incapacity, and not having power to sell or convey such lands except under the provisions of the said Act, and the Acts incorporated therewith.

Now, therefore, the said company nominate *C. D.*, and the said *A. B.* nominates *E. F.*, two able practical surveyors, to determine the purchase money and compensation to be paid for the said lands and hereditaments which under the said Act and the Acts incorporated therewith, the said *A. B.*, can sell and convey and the compensation for the permanent damage or injury to any other lands of the said *A. B.* held therewith.

Dated this day of .

(Signed) *A. B.*
Secretary to the Company.

SCHEDULE AND PLANS.

NO. 2.—NOTICE OF APPLICATION TO TWO JUSTICES UNDER SECTION 9 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845, TO APPOINT A SURVEYOR (*ante*, p. 25).

To the company.

Whereas the two surveyors nominated by us in writing on the day of have failed to agree in a valuation of the amount of the purchase money and compensation to be paid to me for the lands and hereditaments referred to in the said nomination, and of the compen-

Appendix. sation to be paid for any permanent damage or injury to any other lands held therewith. Now, therefore, I, A. B., do in accordance with the powers of section 9 of the Lands Clauses Consolidation Act, 1845, give you the company notice that I intend on the day of at o'clock in the forenoon to apply at to two of Her Majesty's justices to nominate and appoint a surveyor to determine the matters referred to the valuation of the two surveyors under our said nomination.

Dated the day of 18 .

(Signed) A. B.

No. 3.—APPOINTMENT BY TWO JUSTICES OF THIRD SURVEYOR WHERE TWO SURVEYORS APPOINTED UNDER SECTION 9 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845, CANNOT AGREE (*ante*, p. 25).

Whereas application has been made to us, the undersigned W. X. and Y. Z., being two of Her Majesty's justices assembled and acting together at by A. B., under section 9 of the Lands Clauses Consolidation Act, 1845, to nominate and appoint a surveyor. And, whereas, it has been shown to us that the surveyors nominated by the company and the said A. B. cannot agree in a valuation of the amount of purchase money or compensation to be paid to A. B. for his lands and hereditaments described in the said nomination, and the schedule thereto, and the amount of the compensation to be paid for any permanent damage or injury to any such lands. And that the said A. B. has given due notice to the company of this application. Now, therefore, we do nominate C. D. to be the third surveyor to make the said valuation.

Given under our hands this day of 18 , at

(Signed) W. X.
Y. Z.

No. 4.—DECLARATION IN WRITING OF THE CORRECTNESS OF THE VALUATION BY SURVEYOR OR SURVEYORS UNDER SECTION 9 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845, TO BE ANNEXED TO VALUATION (*ante*, p. 25).

We, C. D. and E. F., the two surveyors nominated under section 9 of the Lands Clauses Consolidation Act, 1845, and the Act, 18 , by the company, and by A. B. to determine the purchase money, and compensation to be paid for the lands and hereditaments referred to in the schedule to the formal nomination dated the day of , which under the said Act and the Acts incorporated therewith, the said A. B. can sell and convey, and also to determine the

compensation for the permanent damage and injury to any such lands, **Appndx.**
 having agreed to the valuation hereinbefore set out, do hereby in
 writing each severally declare the correctness of the said valuation,
 and have hereto subscribed our names.

Dated the day of .

(Signed) *C. D.*
 E. F.

[If the two surveyors have differed, the surveyor nominated by the justices
 is to make and subscribe a similar declaration and annex it to his valuation.
 A similar declaration requires to be made under sections 59 and 85 of the
 Lands Clauses Act, 1845; see forms to section 85, *post*.]

**No. 5.—CERTIFICATE OF TWO JUSTICES THAT THE CAPITAL HAS BEEN
 SUBSCRIBED UNDER SECTION 17 OF THE LANDS CLAUSES CON-
 SOLIDATION ACT, 1845 (*ante*, p. 32).**

In pursuance of the Railway Act, 18 , and section 17 of the
 Lands Clauses Consolidation Act, 1845, we, the undersigned *A. B.* and
C. D., being two of Her Majesty's justices assembled and acting together
 at , do certify on the application of the railway company
 that the sum of £ , being the whole of the capital prescribed by
 the said Act (special Act of company) has been subscribed under contract
 binding the parties thereto, their heirs, executors and administrators,
 for payment of the several sums by them respectively subscribed.

Given under our hands this day of 18 .

(Signed) *A. B.*
 C. D.

[A single police magistrate has the same power as two justices under
 1 & 3 Vict. c. 71, s. 14.]

**No. 6.—NOTICE TO TREAT UNDER SECTION 18 OF THE LANDS CLAUSES
 ACT, 1845 (*ante*, p. 33).**

C. D. Sewerage Board.

Lands in the parishes of and in the counties
 of and .

In pursuance and exercise of the powers and provisions contained in
 and conferred by a provisional order included in "The Local
 Government Board's Provisional Orders Confirmation (No. O.)
 Act, 189 ," and in and by the Lands Clauses Consolidation
 Act, 1845, and the other Acts of Parliament incorporated with
 the said Acts, and relating to the *C. D.* Sewerage Board, or in
 and by any other Acts of Parliament.

I do hereby, on behalf of the said *C. D.* Sewerage Board, give you
 and each of you notice, that the said *C. D.* Sewerage Board require to

Appendix. take and use for the purposes of their undertaking the eighty pieces or parcels of land and hereditaments delineated and described in the map or plan hereunto annexed and thereon edged pink, containing in the whole 660 acres or thereabouts, and parts whereof are situate in the parish of _____, in the county of _____, and numbered respectively 1 to 77 (inclusive), as in the said parish of _____, and part whereof are situate in the parish of _____, in the county of _____, and are numbered respectively 1, 2, and 3, as in the said parish of _____, in the said plan hereunto annexed, and also in the map or plan and book of reference deposited in the office of the said *C. D. Sewerage Board*, at the _____ board offices, which eighty pieces of land and hereditaments

belong, or are reputed to belong to you, or some, or one of you, or in which you or some, or one of you, claim to have some estate or interest.

And I further give you notice, that the said eighty pieces of land and hereditaments in the said plan edged pink, containing in the whole 660 acres or thereabouts, being required by the *C. D. Sewerage Board*, for the purposes of their said undertaking, and by the said provisional order authorised to be taken, it is the intention of the said *C. D. Sewerage Board* to take the same and to treat and contract, and they hereby offer to treat and contract for the purchase of the same, and of all subsisting leases, terms, estates and interests therein, and for all compensation to be made for any damage that may be sustained by you or any of you by reason of the execution of the works.

And further, that you are hereby required, within twenty-one days after the service of this notice, to deliver or cause to be delivered at the offices of *A. B.*, solicitor to the said *C. D. Sewerage Board*, at _____, a statement in writing of the particulars of your several estates and interests in the lands and hereditaments intended to be purchased by the said *C. D. Sewerage Board* as aforesaid, and of the claims made by you in respect thereof.

And you are also required, within the said period of twenty-one days, to produce to the said *A. B.*, at his offices aforesaid, the lease or leases (if any) for a longer period than one year under which you, or either of you, have, or claim to have, any estate or interest in the lands and hereditaments so intended to be taken and purchased by the *C. D. Sewerage Board* as aforesaid.

Dated this _____ day of _____, one thousand eight hundred and ninety-_____.

To
and to all and every other
person and persons whom
it may concern.

A. B.,
Clerk to the said *C. D. Sewerage Board*.

In order to assist you in complying with the provisions of the Act, a schedule of claims, to be filled in and signed by you, is annexed to this notice.

No. 6A. FORM OF CLAIM AND PARTICULARS OF ESTATE BY AN OWNER.

(To accompany last precedent.)

C.— D.— Sewerage Board.

Lands in the Parishes of —————.

SCHEDULE OF CLAIM to be filled in and signed by owners, lessees, and occupiers of property required for the purposes of the above undertaking, under the powers contained in the provisional order contained in the Local Government Board's Provisional Order Confirmation (No. 1) Act, 1891, and the Acts of Parliament therein incorporated.

Name and description and place of abode of the party.	Situation and description of property.	Nature of interest, whether owner, lease, or yearly tenant; and if owner, whether in fee or in tail for life; and if lessee, then for what term or number of years, and of whom held, and at what rent; and generally state all charges and incumbrances affecting such respective estates, whether owner, or lessee, or yearly tenant.	Particulars of claim, and in such particulars distinguish the amount claimed for the value of the land, and the amount claimed for damage by severance or otherwise.

Appendix.

No. 7.—NOTICE TO TREAT FOR AN EASEMENT UNDER A SPECIAL ACT AND UNDER SECTION 18 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 33).

To A. B. and to all persons having
or claiming any estate or interest
in the lands after-mentioned and
to all others whom it may
concern.

Pursuant to and by virtue of "The Act, 187 " (hereinafter referred to as the special Act) and the Acts and portions of Acts incorporated therewith the mayor aldermen and citizens of the city of (hereinafter referred to as the corporation) hereby give you notice that they require and are authorised to purchase take and acquire in the lands described in the schedule hereto an easement and right for the purpose of constructing placing laying inspecting maintaining cleansing repairing conducting and managing the waterworks by the special Act authorised and that a description of the nature of such easement and right is hereinafter contained under the heads (a) (b) (c) (d) (e) and (f).

- (a) The easement and right in perpetuity of at any time or times constructing placing and laying and of thereafter using inspecting maintaining cleansing repairing replacing and relaying conducting and managing an aqueduct as hereinafter defined in sub-section (d) in through upon under or over the lands described in Part I. of the said schedule together with all necessary proper and convenient works which the corporation may construct under the powers of the special Act in connection with the said waterworks and with all rights of entry from time to time expedient for the purposes aforesaid and for the purposes aforesaid the corporation may exercise the powers of the special Act and the several Acts and several portions of Acts incorporated therewith and also (without prejudice to the foregoing) the easement and right of depositing surplus material and spoil upon the lands described in Part II. of the said schedule together with such rights of entry and passage as may be necessary for making such deposit.
- (b) The corporation in constructing the aqueduct other than the several wells &c. hereinafter mentioned in sub-section (d) (4) (except in crossing streams or rivers) are to lay aside so much of the productive soil and afterwards to replace the same uppermost on the land from whence such soil shall have been taken as will restore the surface as nearly as practicable to its original level and condition and so that there shall (unless the owner shall notify to the contrary prior to the determination or assessment of the compensation) be at least two feet six inches of cover over the aqueduct except where means of access thereto will be required but this sub-section (b) shall not be applicable to tunnel where the surface is unbroken.
- (c) The corporation shall to the reasonable satisfaction of the owner or his agent reinstate all watercourses fences roads and foot-paths which may be crossed injured or interfered with under the powers of the special Act and all land drains severed will

be picked up by a new master drain on the high side of the aqueduct and carried to a suitable outfall to the reasonable satisfaction of the owner or his agent. **Appndx.**

- (d) The lands required for the said easement and right are shown upon the plans hereto annexed marked respectively A B and C and are as follows :—

Reference to plan.	(1) For conduit or tunnel (coloured yellow upon plan), a width of seven yards.		(2) For lines of pipe (coloured black upon plan), a width of eleven yards.		(3) For conduit or pipes with embankment (coloured blue upon plan).		(4) For wells, &c. (coloured red upon plan).
	Length in yards.	Aggregate area or thereabouts of statute measure.	Length in yards.	Aggregate area or thereabouts of statute measure.	Aggregate length in yards.	Aggregate area or thereabouts of statute measure.	Aggregate area or thereabouts of statute measure.
Plan A. ...	2522½	A. R. P. 3 2 23½	... ..	A. R. P.	68	A. R. P. 0 0 18½	A. R. P. 0 0 20
Plan B. ...	... ..	... ..	521	1 0 29½	... ..	... ..	0 1 31½
Plan C. ...	1634½	2 1 18½	... ..	... ..	557	1 0 9½	0 0 1½
TOTALS	4157	6 1 2	521	1 0 29½	625	1 0 27½	0 2 23

The aforesaid lines of pipe (not exceeding five in number) to be laid side by side at the same or at different times when and as the corporation may determine.

All which said conduit tunnel lines of pipe wells &c. are in this notice referred to as the aqueduct. As regards the lands described in Part I. of the schedule hereto situate in the townships of and the corporation will deviate from the lines shown upon the Parliamentary plans to the extent indicated upon the said plans hereto annexed marked respectively B and C.

- (e) The three sections hereto annexed marked respectively A' B' and C' show by a red line or colour the maximum height to which the aqueduct (inclusive of the aforesaid two feet six inches of cover) will be carried or placed above the natural surface of the ground.

- (f) The corporation will from time to time pay compensation in respect of surface damage which may from time to time arise from the repairing of the aqueduct or laying any additional line of pipe and such payment will be made by the corporation to the person or persons for the time being in occupation of the lands damaged.

Save as herein mentioned the purchase money and compensation under this notice to treat will be in respect of the purchase of the

APPENDIX

easement and right hereinbefore described and for all damage sustained or to be sustained by the owner by reason of the exercise of the powers of the special Act and the Acts and portions of Acts incorporated with the special Act.

And the corporation hereby demand from you the particulars of your estate and interest or estates and interests in the said lands and of the claims made by you in respect of the purchase of the said easement and right by the corporation in manner aforesaid and they require you to specify the nature of your estate and interest and whether in fee or for life or other estate or interest in the said lands and also the tenure thereof and in or of what manor or manors respectively situate or held and also the ancient accustomed rents and the fines heriots or other incidents payable in respect thereof and in case of such lands or any part thereof being enfranchised to describe such lands and to specify at what date and by virtue of what instrument the same were enfranchised.

And the corporation hereby give you further notice that they are willing to treat for the purchase of the easement and right hereinbefore described in the said lands described in the said schedule hereto in manner aforesaid and as to the compensation to be made to you and to all parties interested for the damage that may be sustained by reason of the premises and the execution of the works authorised by the said special Act and the Acts and portions of Acts incorporated therewith respectively.

And the corporation in case you having a greater interest in the lands described in the said schedule hereto than as tenant at will claim compensation in respect of any unexpired term or interest under any lease or grant of the said lands hereby require you to produce the lease or grant in respect of which such claim is made or the best evidence thereof in your power.

THE SCHEDULE ABOVE REFERRED TO.

PART I.

All those the lands situate in the township of _____ in the parish of _____ in the county of _____ delineated and described in the aforesaid map or plan marked A hereunto annexed and described and comprised in the parliamentary plans and book of reference authorised adopted and referred to in the special Act and therein respectively distinguished by the numbers or figures 1, 1a, 2, 3, 4, 5, 6a and 6b in respect of the aforesaid parish of _____

And also all those the lands situate in the township of _____ in the parish of _____ in the aforesaid county of _____ delineated and described on the aforesaid map or plan marked B hereunto annexed and described and comprised in the said parliamentary plans and book of reference and therein respectively distinguished by the numbers or figures 257, 258, 259, 260, 261, and 263 in respect of the aforesaid parish of _____

And also all those the lands situate in the township of _____ in the parish of _____ in the aforesaid county of _____ delineated and described in the aforesaid map or plan marked C hereunto annexed and described and comprised in the said parliamentary plans

and book of reference and therein respectively distinguished by the numbers or figures 79, 80, 100, 102, 103, 105, 106, 107, 110 and 112, in respect of the aforesaid parish of . Appndx. —

PART II.

All those the lands situate in the aforesaid township of in the aforesaid parish of delineated and described in the aforesaid map or plan marked A hereunto annexed and thereon coloured brown and described and comprised in the said parliamentary plans and book of reference and therein respectively distinguished by the number or figure 4 in respect of the aforesaid parish of .

And also those the lands situate in the aforesaid township of in the aforesaid parish of delineated and described in the aforesaid map or plan marked B hereunto annexed and thereon coloured brown and described and comprised in the said parliamentary plans and book of reference and therein respectively distinguished by the number or figures 258 in respect of the aforesaid parish of .

And also all those the lands situate in the aforesaid township of in the aforesaid parish of delineated and described in the aforesaid map or plan marked C hereunto annexed and thereon coloured brown and described and comprised in the said parliamentary plans and book of reference and therein respectively distinguished by the numbers or figures 102, 103, 105, 110, 112 in respect of the aforesaid parish of .

Dated this day of one thousand eight hundred and eighty

By Order,
J. K.,
Town Clerk.

Extract from the Act, 187 .

SECTION .—The corporation may, in lieu of acquiring any lands in the counties of and , or either of them (other than the lands required for the new reservoir by this Act authorised to be constructed in the township of , in the county of), acquire such easements and rights in such lands as they may require for the purpose of constructing, placing, laying, inspecting, maintaining, cleansing, repairing, conducting, or managing the waterworks by this Act authorised, and may give notice to treat in respect of such easements and rights, and may in such notice describe the nature thereof, and the several provisions of the Lands Clauses Consolidation Act, 1845, inclusive of those with regard to arbitration and the summoning of a jury, shall apply to such easements and rights as fully as if the same were lands within the meaning of such Act: Provided always, that nothing herein contained shall authorise the corporation to acquire by compulsion any such easement in any case in which the owner in his particulars of claim shall require the corporation to acquire the lands in respect of which they have given notice to treat for the acquisition of an easement only, and every notice to treat for the acquisition of an easement shall be endorsed with notice of this proviso.

Corpora-
tion may
acquire
easement
only in
certain
cases.

Appendix.

**No. 8.—CLAIM BY OWNER AND PARTICULARS OF ESTATE IN REPLY TO
LAST PRECEDENT AND SIGNIFICATION OF DESIRE TO HAVE THE
AMOUNT OF COMPENSATION SETTLED BY ARBITRATION UNDER
SECTION 23 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 56).**

To the mayor aldermen and citizens of the city of _____ and to all
others whom it may concern.

I, A. B., of _____ in the county of _____, having received a
notice from you the said mayor aldermen and citizens bearing date the
_____ day of _____ 188 _____ demanding from me the particulars of
my estate and interest or estates and interests in certain lands heredi-
taments and premises therein mentioned and in which you require
to purchase take and acquire an easement and right for the purposes of
the _____ Act 1879 as specified in the said notice and as regards
the lands described in Part I. of the schedule to the said notice situate
in the township of _____ and _____ that the corporation would
deviate from the line shown upon the parliamentary plans to the extent
indicated upon the plans annexed to that notice marked respectively
B and C and demanding from me the particulars of my estate and
interest or estates and interests in the said lands and of the claims made
by me in respect of the purchase of the said easement and right by the
corporation and requiring me to specify the nature of my estate and
interest and whether in fee for life or other estate or interest in the
said lands and also the tenure thereof Now I do hereby give you
notice that I claim an estate of freehold for and during the life of C. D.
in all the said lands tenements hereditaments and premises mentioned
and referred to in the said notice And I hereby give you further
notice that you have no right under the said _____ Act or otherwise
to acquire without my consent any easement or right for the purposes
described in the said notice under the heads (a) (b) (c) (d) (e) and (f)
and referred to as the aqueduct in over or upon the lands described in
the said notice situate in the townships of _____ and _____ in the
line of the proposed deviation of the aqueduct as described in the said
notice and plan which consent has not been applied for and has not
been given And I hereby further give you notice that I claim the sum
of _____ for the purchase of the easement or right over such of the
lands described in Part I. of the said notice and plan as you are
authorised to take and acquire without my consent for the purposes of
the aqueduct And that I claim compensation at the rate of _____
per acre and so in proportion for any less quantity than an acre for the
land described in the second part of the schedule to the said notice and
plan over which you propose to take and acquire an easement or right
for the purpose of depositing surplus material and spoil thereon and for
the rights of entry and passage necessary for making such deposit And
I hereby give you notice that unless you the said mayor aldermen and
citizens agree to pay the sum of money above claimed it is my desire
that the amounts to be paid to me in respect of the above claims shall
be settled by arbitration in the manner prescribed by the Lands Clauses
Consolidation Act, 1845.

Witness my hand this _____ day of _____ 188 _____.
(Signed)

[For forms under sections 22 and 24, see those under section 121, *post*.]

No. 9. — NOTICE BY OWNER OF DESIRE TO HAVE COMPENSATION SETTLED BY ARBITRATION UNDER SECTION 23 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 56). **Appndx.**

To the mayor, aldermen, and burgesses of the town of _____ and to all others whom it may concern.

Whereas I, the undersigned *A. B.*, have received from you a certain notice, dated the _____ day of _____, demanding from me the particulars of my estate and interest in certain lands and hereditaments therein described, and of the claim made by me in respect thereof. Now I do hereby send you the said particulars in the schedule hereto, and give you notice that unless you are willing to agree to pay to me the said sum of £ _____, I desire to have the amount of purchase money and compensation to be paid by you for my estate and interest in the said land and hereditaments, and the amount of compensation for damage to be sustained by me by reason of the severing of the lands taken from my other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the _____ Improvement Act, 18 _____, and the Acts incorporated therewith, settled by arbitration in the manner prescribed by the Lands Clauses Consolidation Act, 1845.

Dated this _____ day of _____, 18 _____. (Signed)

SCHEDULE.

No. 10. — NOTICE BY OWNER TO PROMOTERS OF DESIRE FOR ARBITRATION AND REQUEST TO PROMOTERS TO APPOINT AN ARBITRATOR PURSUANT TO SECTION 25 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 61).

Main Sewerage Board.

Whereas by a certain notice under the hand of _____ the clerk to you, the said _____ Main Sewerage Board, bearing date the _____ day of _____, we are informed that you, the said board, require to take and use for the purposes of your undertaking in the said notice mentioned, the eighty pieces or parcels of lands and hereditaments delineated on the map or plan annexed to such notice, and thereon edged pink containing in the whole six hundred and sixty acres or thereabouts, part thereof numbered respectively 1 to 77 (inclusive), being in the parish of _____ in the county of _____, and the remaining part thereof numbered respectively 1, 2, and 3, being in the parish of _____, in the county of _____, which lands and hereditaments are in the said notice stated as reputed to belong to us or some or one of us, or in which we or some or one of us claim to have some estate and interest. And we are also required by the said notice to deliver a statement in writing of the particulars of our several estates and interests in such parcels of lands and hereditaments. And whereas by another notice also under the hand of the said _____, as clerk to your board, bearing date the _____ day of _____, one thousand eight hundred and ninety _____, and received by us on the _____ day of _____, one thousand eight hundred and ninety _____, we are informed that it is your intention, after the expiration of ten days from the service thereof, to cause a jury to be summoned in pursuance of the provisions of the Lands Clauses

~~Appendix~~

Consolidation Act, 1845, and other Acts incorporated therewith, for settling the amount of compensation to be paid by the said board to us for our interest in the said lands and hereditaments belonging to us, and the damage that may be sustained by us by reason of the execution of the works of the said board, and for that purpose to issue your warrant to the sheriff of the said county of _____, requiring him to summon a jury accordingly. Now we, the undersigned _____ and _____ inform you, the said board, that the said lands and hereditaments were devised to us as trustees by the last will and testament of _____, and that under the provisions of the said will we have power, with the consent of the _____, to sell the said lands and to convey the same to the purchaser thereof for an estate in fee simple of inheritance, and that we claim as compensation for the purchase money for the same and for the damage that may be sustained by reason of the execution of your works, the sum of _____ pounds. And take notice that we are ready and willing on payment of the said sum of _____ pounds to sell, convey, and to release to you the said main sewerage board, all our estate, right, title, and interest in the said lands and hereditaments according to the provisions contained in the Acts of Parliament and provisional order in your said notice mentioned.

And further, take notice that if our said claim of _____ pounds as and for compensation as aforesaid shall not be paid or accepted by you, we hereby, in pursuance of the provisions contained in the said Acts and provisional order, or in any other Act or Acts of Parliament, signify to you our desire to have the amount of the said compensation to be paid to us settled by arbitration, and we hereby require you, the said board, to appoint an arbitrator to act on your behalf in the matter of the said arbitration.

As witness our hands this _____ day of _____ one thousand eight hundred and ninety-_____.

(Signed)

No. 11.—APPOINTMENT OF ARBITRATOR BY A COMPANY AT REQUEST OF OWNER UNDER SECTION 25 OF THE LANDS CLAUSES ACT, 1845 (ante, p. 61).

Whereas by a certain notice under the hand of A. B., of _____ dated the _____ day of _____ we are required to appoint an arbitrator to act on behalf of the _____ Company in the matter of an arbitration under the Lands Clauses Consolidation Act, 1845, to determine the amount of purchase money and compensation to be paid by the company for the interest which the said A. B. claims to be entitled to in the lands and hereditaments described in the schedule hereto, and also the amount of damage (if any) to be sustained by the said A. B. by reason of the severing of the lands taken from the other lands of the said A. B. or otherwise injuriously affecting such other lands by the exercise of the power of the said Act. Now, therefore, we, the _____ Company, appoint C. D., of _____, Esquire, civil engineer and surveyor, to be arbitrator on their behalf in the matter of the said arbitration.

Dated this _____ day of _____ 189 _____.

(Signed)

Secretary to the
SCHEDULE.

Company.

No. 12.—APPOINTMENT OF AN ARBITRATOR BY AN OWNER, PURSUANT TO SECTION 25 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 61). **Appndx.**

In pursuance of the Act, 18 , and the Public Acts therewith incorporated, I of by this writing under my hand appoint , of , surveyor and valuer, to be my arbitrator, to act for me and on my behalf to settle and determine the purchase money and compensation to be paid to me for and in respect of the purchase by the Company of the estate and interest which I, the said as aforesaid, am or claim to be entitled to sell to the said company in the lands and hereditaments situate in , in the parish of , in the county of , comprised in a certain notice to treat given by the said company to me the said , and dated the day of , 18 . And also the compensation to be paid by the said company in respect of the damage, injury, or loss (if any) which I, the said as aforesaid, may sustain by reason of the taking of the said lands and hereditaments and the execution of the works authorised by the first above-mentioned Act. And also, as such arbitrator on my part and behalf, to do all such other acts as are required by the said first above-mentioned Act or any Acts incorporated herewith.

Dated the day of 18 .
(Signed)

No. 13.—NOTICE TO OWNERS OF APPOINTMENT OF ARBITRATOR AND REQUEST TO OWNERS TO APPOINT AN ARBITRATOR PURSUANT TO SECTION 25 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 61).

Sewerage Board.
To and , Esquires, trustees of the last will and testament of .
Whereas the Sewerage Board did on or about the day of receive a notice in writing from you, dated the day of signifying your desire that if your claim of pounds as and for compensation as hereinafter mentioned should not be paid or accepted by the said Sewerage Board, hereinafter called "The said sewerage board," the amount of the said compensation to be paid to you should be settled by arbitration, and requiring the said sewerage board to nominate and appoint an arbitrator on their behalf for the purposes of settling by arbitration in the manner prescribed by the Lands Clauses Consolidation Act, 1845, and other Acts (if any) incorporated therewith the amount of compensation to be paid by the said sewerage board for your interest in certain lands and hereditaments situate in the parishes of , in the county of , and , in the county of , and in the said places mentioned or referred to as belonging to you as trustees of the above-named , and for the damage that may be sustained by you by reason of the execution of the works of the said sewerage board. And whereas in pursuance of the requirements of such notice as aforesaid the said sewerage board did at their meeting held on the day of , nominate and appoint of the said county of , land agent and surveyor, to be an

Appendix. arbitrator on the part of the said sewerage board for the purpose and in the matter of the said arbitration.

Now, therefore, the said sewerage board, in pursuance of the provisions of the said Lands Clauses Consolidation Act, 1845, and other Acts (if any) or provisional order in this behalf, themselves having appointed such arbitrator as aforesaid, do hereby request and require you to nominate and appoint an arbitrator to act on your behalf for the purposes and in the matter of the said arbitration.

As witness my hand this day of , one thousand eight hundred and

By order of and for the said sewerage board,

(Signed)

Clerk to the said

Main Sewerage Board.

NO. 14.—APPOINTMENT OF ARBITRATOR TO ACT FOR BOTH PARTIES, IN ONE PARTY ON FAILURE OF APPOINTMENT BY OTHER PARTY, UNDER SECTION 25 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (ante, p. 61).

Whereas under the provisions of the Act and of the Acts incorporated therewith the Company on the day of 189 , gave notice to me, the undersigned A. B., of in the county of , that they required for the purposes of their undertaking certain lands and hereditaments described in the said notice and delineated on the plan annexed thereto, and whereas before the said company had issued their warrant to the sheriff of the said county to summon a jury in respect of the matter of the said lands I signified to them, by notice in writing, my desire to have the amount of compensation payable to me for my estate and interest in the said lands and hereditaments settled by arbitration; and whereas, by writing under my hand on the day of 189 , I appointed C. D., of , land agent and surveyor, to be arbitrator on my behalf to determine the amount of purchase money and compensation to be paid by the said company for my estate and interest in the said lands and hereditaments, or the interest therein which I am enabled to sell and convey under the said Acts, and also the amount of damage (if any) to be sustained by me by reason of the severing of the land taken from my other lands, or otherwise injuriously affecting such lands by the exercise of the powers of the said Acts; and whereas on the day of 189 , I gave notice in writing to the said company of the said appointment, and requested them within fourteen days from the date of the said notice to appoint an arbitrator to act on their behalf in the said matters; and whereas fourteen days have elapsed since the time of the said notice and request, and the said company have failed to appoint an arbitrator to act on their behalf. Now, therefore, I appoint U. P., of , land agent and surveyor, to act both on my behalf and on behalf of the said company in the matters aforesaid.

Dated the day of 189 .

(Signed)

A. B.

SCHEDULE.

No. 15.—APPOINTMENT OF A SINGLE ARBITRATOR BY AGREEMENT PURSUANT TO SECTION 25 OF THE LANDS CLAUSES ACT, 1845
(*ante*, p. 61).

Appndx.

Whereas under the provisions of the Acts or some or one of them and of the Acts incorporated therewith *A.* (the promoters) and *B.* (the owner) have agreed to determine the amount of purchase money and compensation to be paid by the said *A.* to the said *B.* for his interest in certain land and hereditaments required by the said *A.* for the purposes of their undertaking and described in the schedule hereto, and for injury sustained by other land of the said *B.* by reason of the exercise of the powers of the said Acts. Now, therefore, we, the said *A.* and I the said *B.*, do concur in appointing *C. D.* to be a single arbitrator to determine the amount of purchase money and compensation to be paid by the said *A.* for the interest of the said *B.* in the said land and hereditaments or the interest therein which the said *B.* is enabled to sell under the said Acts, and also the amount of damage sustained and to be sustained by reason of the severing of the lands taken from other lands of the said *B.*, and by reason of such other lands being injuriously affected by the exercise of the powers of the said Acts and also for damage done to such other lands.

Dated this day of .
(Signed)
(Signed)

SCHEDULE.

No. 16.—APPOINTMENT OF UMPIRE BY ARBITRATORS UNDER SECTION 27 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 66).

Sewerage Board.

Whereas I, the undersigned *F. G.*, of , in the county of , land agent and surveyor, have been duly appointed an arbitrator on the part of *A. B.*, *C. D.*, and *E. H.*, trustees of the last will and testament of *O. P.*, and I, the undersigned *H. I.*, also of afore-said, land agent and surveyor, have been duly appointed an arbitrator on the part of the Sewerage Board for the purpose of settling by arbitration, in pursuance of the powers and provisions contained in and conferred by a provisional order included in the Local Government Board's Provisional Orders Confirmation (No.) Act, 189 , in the manner prescribed by the Lands Clauses Consolidation Act, 1845, and the other Acts (if any) incorporated therewith, the amount of purchase money and compensation to be paid by the Sewerage Board for the interest belonging to the said *A. B.*, *C. D.*, and *E. H.* in the lands and hereditaments mentioned in certain respective notices in writing bearing date the day of 189 , and given by the said Sewerage Board to the said *A. B.*, *C. D.*, and *E. H.*, their interest in the said lands and hereditaments, and for the damage that may be sustained by the said *A. B.*, *C. D.*, and *E. H.* by reason of the execution of the works of the said sewerage board. Now therefore, we, the said *E. G.* and *H. I.*, do hereby, before we enter upon the matters

No. 19.—NOTICE UNDER SECTION 80 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845, TO ARBITRATOR (*ante*, p. 69). **Appendix.**

In the matter of an Arbitration between *A. B.*, of _____, and the _____ Company.

To *P. O.*, the arbitrator appointed to act on behalf of the said company.

Take notice that I, the undersigned *A. B.*, require you to proceed in the matter of the said arbitration, and further, that if you for seven days after the receipt of this notice neglect to act, *M. N.*, the arbitrator hereby appointed on my behalf, will proceed *ex parte* and that his decision shall be as effectual as if he had been the single arbitrator appointed by the parties to the said arbitration.

Dated this _____ day of _____ 189 .
(Signed) *A. B.*

No. 20.—ENLARGEMENT OF TIME FOR MAKING AWARD, PURSUANT TO SECTION 31 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 69).

We _____ the arbitrator appointed by and on behalf of the above named _____ and _____ the arbitrator appointed by and on behalf of the above-named company, do hereby in execution of the powers for the purpose given to us by the Lands Clauses Consolidation Act, 1845, extend the time by the same Act appointed for making our award concerning the question of disputed compensation arisen under the _____ Act, 18 _____, and other matters referred to us until the _____ day now next ensuing.

As witness our hands this _____ day of _____ 18 _____.
(Signed) _____

No. 21.—NOTICE BY ARBITRATORS OF FAILURE TO AGREE, PURSUANT TO SECTION 31 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 69).

To *O. P.*

In the matter of an Arbitration between *A. B.*, of _____ and the _____ Company.

We, the undersigned *W. X.* and *Y. Z.*, hereby give you notice that we are unable to agree in respect of the matters referred to us by the said *A. B.*, and the _____ company, and that the determination of the said matters has thereby devolved upon you as umpire, duly appointed by us on the _____ day of _____ 189 .

The _____ day of _____ 189 .
(Signed) *W. X.*
Y. Z.

No. 22.—FORM OF OATH FOR A WITNESS OR PARTY BEFORE AN ARBITRATOR UNDER SECTION 32 OF THE LANDS CLAUSES ACT OR UNDER THE ARBITRATION ACT, 1889 (*ante*, p. 70).

The evidence you shall give touching the matters in question shall be the truth, the whole truth and nothing but the truth. So help you God.

Appendix. No. 23.—SCOTCH FORM OF OATH FOR A WITNESS OR PARTY BEFORE AN ARBITRATOR (*ante*, p. 71).

[The witness holds up his right hand, and repeats the oath after the arbitrator, no book is used.]

I swear by Almighty God [as I shall answer to God at the Great Day of Judgment] that I will speak the truth, the whole truth, and nothing but the truth.

This form may be used in England if the party so desire (Oaths Act, 1888, s. 5.)

The part in brackets is now omitted by some Scotch judges.

No. 24.—AFFIRMATION FOR A WITNESS OR PARTY BEFORE AN ARBITRATOR WHERE WITNESS OBJECTS TO BE SWORN, UNDER THE OATHS ACT, 1888 (*ante*, p. 71).

[The witness should repeat the affirmation after the arbitrator.]
I, A. B., do solemnly, sincerely and truly declare and affirm that the evidence I shall give touching the matters in question shall be the truth, the whole truth, and nothing but the truth.

For forms of oaths for persons belonging to other religions, and in the case of interpreters see "Stringer on Oaths."

No. 25.—AWARD BY TWO ARBITRATORS IN WRITING UNDER SECTION 35 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 77).

To all to whom these presents shall come, L. M., of and, N. O., of send greeting.

Whereas on the day of the mayor, aldermen, and burgesses of the town of gave notice to A. B., that in pursuance of the powers of the Street Widening Act, 189 , and the Acts incorporated therewith, they required to purchase and take certain lands and hereditaments (here insert description of lands from notice to treat). And whereas, the said A. B. claimed to be interested in the said lands and hereditaments under a lease for years, dated the day of 188 , of which a term of about fifteen years was then unexpired. And whereas no agreement has been come to as to the amount of purchase money and compensation to be paid by the said mayor, aldermen, and burgesses for the interest claimed by the said A. B., in the said lands and hereditaments, and also the amount of damage to be sustained by him, or by the exercise of the powers of the said Acts. And whereas, the said mayor, aldermen, and burgesses on the day of , 189 , appointed by writing under their common seal, L. M., as arbitrator, to act on their behalf in the determination of the amount of the said purchase money and compensation. And whereas the said A. B. on the day of 189 , appointed in writing under his hand the said

N. O., as arbitrator, to act on his behalf in the determination of the amount of the said purchase money and compensation. And whereas we, the said arbitrators, before entering upon the consideration of the matters referred to us duly appointed an umpire, and made and subscribed the declaration required by the said Acts. Now know ye, that we, the said arbitrators, having viewed the said land and hereditaments, and having considered the evidence adduced by the said respective parties do award and determine that the sum of £ is the amount of purchase money and compensation to be paid by the said mayor, aldermen, and burgesses for the interest claimed by the said **A. B.** in the said lands and hereditaments, and that the said sum includes an amount for all damages sustained or to be sustained by the said **A. B.** by reason of the severing of the lands taken from his other lands or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts.

[illegible]

SCHEDULE.

No. 26.—AWARD BY AN UMPIRE.

To all to whom these presents shall come.

I , of , surveyor and valuer, send greeting.

Whereas by the Act, 18 , with which are incorporated the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, as amended by the Lands Clauses (Umpire) Act, 1883, and the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Act, 1863, the Company (hereinafter called the said company) were authorised to take, for the purposes of the said Act, the land and hereditaments situate in the parish of , in the county of , mentioned, numbered, and otherwise described in the schedule to the notice to treat next hereinafter referred to and delineated in the plan thereto annexed, and which are comprised in the plan and book of reference thereto deposited with the clerk of the peace for the said county of .

And whereas by a notice to treat under the hand of _____, secretary to the said company, dated the _____ day of _____, one thousand eight hundred and _____, the said company gave notice in writing to _____, of _____, that they required to purchase or take all the lands and hereditaments contained in the schedule to the now recited notice to treat with the appurtenances, and demanded from him particulars of his estate and interest in the said lands and hereditaments, and of the claims made by him in respect thereof. And that the said company were willing to treat for the purchase of the said lands and hereditaments, or his estate and interest therein, and as to the compensation to be made for the damage that might be sustained by reason of the execution of the works of the said company. And whereas in pursuance of the last-mentioned notice the said _____, by writing dated the _____ day of _____, one thousand eight hundred and ninety-three, under the hand of _____, gave notice to the said com-

Appendix. pany that the said lands and hereditaments were part of the [glebe of the vicarage] of , and that he was entitled to the same as [vicar of] aforesaid, and that he claimed the sum of [one thousand one hundred pounds] as compensation for the value of the said lands and hereditaments so to be taken as aforesaid, and for damage which would be sustained by him by reason of the execution of the works of the said company. And whereas the said and the said company did not agree as to the amount of purchase money and compensation to be paid to the said , and thereupon a question of disputed compensation arose between the said and the said company. And whereas the said and the said company did not concur in the appointment of a single arbitrator to whom the said dispute should be referred. And whereas the said on or about the day of , one thousand eight hundred and , duly nominated and appointed by writing under his hand , of , in the said county of , surveyor, to be the arbitrator on his behalf to whom the question of such compensation as aforesaid should be referred. And whereas the said company on or about the day of , one thousand eight hundred and , duly nominated and appointed by writing under the hand of , the secretary of the said company, of , land agent, to be the arbitrator on behalf of the said company, to whom the question of such compensation as aforesaid should be referred. And whereas the said arbitrators before they entered into the consideration of any of the matters so referred to them as aforesaid respectively, duly made and subscribed, in the presence of a justice of the peace duly authorised in that behalf, the declaration required by the before-mentioned Acts. And whereas the said arbitrators, before they entered upon the matters so referred to them, did on the day of , one thousand eight hundred and , by writing under their hands, duly nominate and appoint me, the before-mentioned , to be the umpire in the matter of the said arbitration. And whereas the said arbitrators took upon themselves the burthen of the reference and duly heard and considered the allegations and proofs of the said , and the said company respectively, concerning the amount of the said compensation. And whereas the said arbitrators disagreed and differed respecting the matters referred to them, and by reason of such differences between them failed to make their award within twenty-one days after the day on which the last of the said arbitrators was appointed, whereby the matters referred to the said arbitrators aforesaid duly came before me as umpire for determination.

Now know ye that I, the said , having taken upon myself the burthen of the reference, and having before entering upon or taking into consideration any of the matters referred to me duly made and subscribed, in the presence of a justice of the peace duly authorised in that behalf, the declaration required by the said Acts, which said declaration is hereunto annexed, and having been attended by the parties and their witnesses, and having heard and considered the allegations and proofs of the respective parties, and having viewed the said lands and hereditaments, do make this, my award in writing, of and concerning the premises in the manner following; that is to say:—

I do award, settle, order, and determine that the sum of is the amount of purchase money and compensation to be paid by the said company to the said in respect of the estate and interest of the said in the lands and hereditaments described in the said

ice to treat and required to be purchased and taken by the said Appndx.
 company as aforesaid and for all damage to be sustained by the
 by reason of the execution of the works of the said
 company.

as witness my hand this day of one thousand eight
 hundred and .

igned and published by the
 said on the day and
 year last above-mentioned
 in the presence of ,
 solicitor.

27.—NOTICE BY PROMOTERS OF INTENTION TO HAVE A JURY
 SUMMONED AND OFFER OF COMPENSATION UNDER SECTION 38 OF
 THE LANDS CLAUSES ACT, 1845 (*ante*, p. 83).

1. D. Sewerage Board.

Lands in the parishes of , and in the counties
 of .

a pursuance and exercise of the powers and provisions contained in
 and conferred by a provisional order included in "The Local
 Government Board's Provisional Orders Confirmation (No.)
 Act, 189 ," and in and by the Lands Clauses Consolidation
 Act, 1845, and the other Acts of Parliament incorporated with
 the said Acts, and relating to the C. D. Sewerage Board, or in
 and by any other Acts of Parliament.

o A. B. and the trustees of the late , namely, and
 , owners in fee or reputed owners in fee of the lands and here-
 ments hereinafter referred to.

Whereas the said C. D. Sewerage Board (hereinafter called "The said
 sewerage board") did, by a notice in writing bearing date the
 of , 189 , duly served on you, give you notice that in
 tention of the powers and provisions contained in the Lands Clauses
 solidation Act, 1845, and the other Acts of Parliament and prom-
 mal orders relating to the said sewerage board, including "The
 al Government Board's Provisional Orders Confirmation (No.)
 189 ," the said sewerage board required to purchase the lands and
 ditaments therein mentioned and delineated and described in the
 or plan thereunto annexed, and situate in the several parishes
 , in the county of , and , in the county
 , and the said sewerage board did thereby demand from you
 particulars of your estate and interest in such lands and heredita-
 ts, or any part thereof, and of the claims made by you in respect
 of.

and whereas you have failed to state any particulars of your claim or
 as in respect of the said lands and hereditaments, or to treat with
 said sewerage board in respect thereof.

ow this is to give you notice, that it is the intention of the said
 sewerage board, after the expiration of ten days from the service hereof,
 use a jury to be summoned in pursuance of the provisions of the

Appndx. said Lands Clauses Consolidation Act, 1845, and other Acts incorporating the same or incorporated therewith for settling the amount of compensation to be paid by the said sewerage board to you or each of you for the interest in the said lands and hereditaments belonging to you, and the damage that may be sustained by you by reason of the execution of the works of the said sewerage board, and for that purpose to issue their warrant to the sheriff of the said county of requiring him to summon a jury accordingly.

And this is to give you further notice, and to state that the said sewerage board are willing to give the sum of £ (pounds) for the interest in the said lands and hereditaments belonging to you and sought to be purchased by the said sewerage board from you as aforesaid, and for the damage that may be sustained by you by reason of the execution of the works of the said sewerage board.

As witness my hand this day of , 189 .

Y. Z.,

Solicitor and clerk to the said Sewerage Board.

NO. 28.—WARRANT TO SHERIFF TO SUMMON A JURY TO DETERMINE THE PURCHASE MONEY PURSUANT TO SECTION 39 OF THE LANDS CLAUSES ACT, 1845 (ante, p. 85).

C. D. Company.

Lands in the parish of , and in the county of

In pursuance and exercise of the powers and provisions contained in and conferred by the (*special*) Act, 18 , and in and by the Lands Clauses Acts.

To sheriff of .

Whereas the *C. D. Company* by a notice dated the day of , 18 , and duly served upon *A. B.*, of , did give notice that in execution of the powers and provisions contained in the Lands Clauses Acts and the (*special*) Act, 18 , the said company required to purchase and take the lands and hereditaments mentioned in the column of the schedule hereto, and situate in the parishes of in the county of , as mentioned in the column of the said schedule ; and whereas the said *A. B.*, by a notice addressed to the said company and dated the day of , 18 , stated that he claims to be interested in the said lands and hereditaments as mentioned in the column of the said schedule, and that he demands compensation for injury to be done to other lands held therewith as stated in the column of the said schedule ; and whereas the said company and the said *A. B.* have been unable to agree as to the amount of purchase money and compensation to be paid to the said *A. B.* in respect of his estate and interest in the said lands and hereditaments and for the injury to be done to the said lands held therewith by reason of the exercise of the powers in the said Acts contained, and the same has become a question of disputed compensation ; and whereas the said company have given notice to the said *A. B.* of their intention to cause a jury to be summoned to determine the said question of disputed compensation, which notice was served on the day of , 18 , being not less than ten days from the date hereof, and

which notice stated the sum of money the said company were willing to give for the interest of the said *A. B.* in the said lands and hereditaments and for the damage to be sustained by him by the execution of the works. Now, therefore, we, the said company in pursuance of the said Acts by this warrant under our common seal, issued to you the sheriff of the said county of _____ hereby require you to summon a jury in accordance with the directions and provisions contained in the said Acts for the purpose of determining by their verdict the amount of the purchase money and compensation to be paid to the said *A. B.* for the purchase of his said estate or interest in the said lands and hereditaments, and also the amount of the compensation to be paid to the said *A. B.* for the injury (if any) done or to be done to the said *A. B.* in respect of the severing of the said lands and hereditaments from the other lands of the said *A. B.* held therewith, or for otherwise injuriously affecting such other lands by reason of the execution of the works by the said company by the exercise of the powers contained in the said Acts.

Given under the common seal of the *C. D.* Company this
day of _____, 18 .

(L.S.)

SCHEDULE.

NO. 29.—NOTICE OF TIME AND PLACE OF INQUIRY TO BE GIVEN BY
THE PROMOTERS OF THE UNDERTAKING PURSUANT TO SECTION 46
OF THE LANDS CLAUSES ACTS, 1845 (*ante*, p. 93).

To *A. B.*

Whereas by a notice dated the _____ day of _____, 18 , the *C. D.* Company gave you notice of their intention to cause a jury to be summoned to determine the amount of the purchase money and compensation payable to you for your interest and estate in the lands and hereditaments mentioned therein, and for the compensation payable to you for the injury (if any) done or to be done to you by reason of the severance of the said lands and hereditaments from other lands held therewith and for otherwise injuriously affecting the same ; and whereas the *C. D.* Company issued their warrant to the sheriff of _____ on the _____ day of _____ requiring him to summon a jury to determine the amount of the purchase money and compensation payable to you in respect thereof, now the said *C. D.* Company hereby give you notice that the inquiry by a jury to determine the same will be held on the _____ day of _____, 18 , at _____ o'clock at _____.

(Signed)

X. Y.,

Secretary to the *C. D.* Company.

NO. 30.—NOMINATION OF A SURVEYOR BY TWO JUSTICES UNDER
SECTION 59 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 108).

Whereas the _____ Company, the promoters of the undertaking authorised by the _____ Act, 18 , and Acts incorporated therewith, have applied to us, the undersigned *W. X.* and *Y. Z.*, being two of Her Majesty's justices of the peace for _____ to nominate a surveyor,

Given under our hands this _____ day of _____, 18____, at _____
(Signed) _____ W. X.
Y. Z.

SCHEDULE OF LANDS TAKEN.

For forms of declaration of impartiality and correctness of valuation, see forms under section 85 of the Lands Clauses Act, 1845, Nos. 40 and 41, *post*.

**No. 31.—NOTICE BY PERSON WHO HAS BEEN ABROAD REQUIRING THE
COMPENSATION TO BE SUBMITTED TO ARBITRATION UNDER SECTION
64 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 121).**

To the Local Board of

Whereas you, the Local Board of _____, have caused the amount of purchase money or compensation payable in respect of certain lands described in the schedule hereto to be determined by the valuation of a surveyor pursuant to the provisions of section 58 of the Lands Clauses Consolidation Act, 1845, and have deposited the amount of such valuation in the Bank of England, while I, A. B., the owner of the said lands, was prevented from treating for the same by reason of absence abroad; and whereas I am dissatisfied with such valuation and have not applied to the Court for payment or investment of the moneys so deposited, I hereby give you notice that I require the question of such compensation to be submitted to arbitration.

Dated this day of , 18 . (Signed) A. B.

SCHEDULE.

No. 32.—APPOINTMENT OF ARBITRATOR, PURSUANT TO SECTION 64 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 121), BY OWNER WHO IS DISSATISFIED WITH VALUATION OF A SURVEYOR APPOINTED UNDER SECTION 58.

Whereas the Local Board caused the amount of purchase money or compensation in respect of certain lands described in the schedule hereto to be determined by the valuation of a surveyor under section 58 of the Lands Clauses Consolidation Act, 1845, and have deposited the amount of such valuation in the Bank of England. And whereas I am dissatisfied with such valuation, and have given due notice in writing to the said Local Board (or district council) requiring

the question of such compensation to be submitted to arbitration.

Appndx.

Now, therefore, I hereby appoint *C. D.*, of , civil engineer, as arbitrator on my behalf to determine whether the amount so deposited as aforesaid by the said local board or district council is a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

Dated the day of 189 .
(Signed) *A. B.*

SCHEDULE.

No. 33.—DEMAND FOR ARBITRATION WHEN LANDS HAVE BEEN INJURIOUSLY AFFECTED, PURSUANT TO SECTION 68 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 124).

To the mayor, aldermen, and burgesses of the town of , and to all others whom it may concern.

Whereas I, *A. B.*, of , am the owner in fee simple of certain lands and hereditaments described in the schedule hereto; and whereas the said lands and hereditaments have been injuriously affected by the execution of certain works carried out by you under the provisions of the Improvement Act, 18 , and the Acts incorporated therewith, in the manner following, that is to say [state nature of injury] and I claim as compensation in respect of the said injury the sum of £

Now, therefore, I give you notice that unless you are willing to pay the said sum of £ , and enter into a written agreement for that purpose within twenty-one days after the receipt of this notice, I desire to have the amount of the compensation to be paid to me settled by arbitration in the manner provided in the Lands Clauses Acts.

(Signed) *A. B.*

SCHEDULE describing the lands and hereditaments referred to in the preceding notice.

No. 34.—DEMAND FOR ARBITRATION WHEN LANDS HAVE BEEN INJURED AND MATERIALS REMOVED IN THE MAKING OF WATERWORKS, PURSUANT TO SECTION 12 OF THE WATERWORKS CLAUSES ACT, 1847 (*ante*, p. 388), AND SECTION 68 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 124).

To the mayor aldermen and citizens of the city of , and to all others whom it may concern.

Whereas in exercise of the powers contained in Act, 18 , and the Acts and portions of Acts incorporated therewith you have entered upon certain closes or parcels of land mentioned and described or referred to in the plans and books of reference deposited with the clerk of the peace of the county of and referred to in the said Act and also in the schedule hereunder written and have therein or thereunder proceeded to make construct lay down and maintain an aqueduct conduit or line of pipes as in the said Act is mentioned and to make spoil banks and side cuttings thereon and therein or on or in parts

Appndx. thereof and have obtained therefrom sand stone gravel and other materials for the construction of the said aqueduct conduit or line of pipes whereby the said lands and the mines and minerals thereunder have been damaged and injuriously affected. And whereas you have not made satisfaction to me for the damage which has been or may be sustained by me by reason of the execution of the said works. Now I, A. B., of in the county of being entitled to an estate of freehold (for and during the life of) as lord of the several manors in which the said lands are respectively situate and being as such lord entitled to the stone slate clay sand gravel and other minerals within or under the same do hereby in pursuance of the statutes in that case made and provided give you the said corporation notice that I require you to pay me compensation in respect of the said lands and the mines and minerals thereunder which you have damaged and injuriously affected and in respect of the stone slate clay sand gravel and other minerals taken therefrom and in respect of my estate or interest therein respectively and that the amount of my claim for compensation by reason of the premises is £ . And further take notice that unless you are willing to pay to me the said sum of £ and shall enter into a written agreement for that purpose within twenty-one days after the receipt by you of this notice then it is my desire that the amount of compensation to be paid to me by you by reason of the premises shall be ascertained by arbitration according to the provisions of the Act or Acts of Parliament in that case made and provided. And if you fail to pay me the said sum of £ or to enter into such written agreement as aforesaid within the said twenty-one days then and in that case I do hereby request and require you to nominate and appoint an arbitrator to act on your behalf in the matter of the said arbitration.

Witness my hand this day of one thousand eight hundred and ninety- .

THE SCHEDULE HEREINBEFORE REFERRED TO.

Parish.	Township.	Tenure, &c.	Numbers on Parliamentary Plan and on Book of Reference.
...	Customary	13, 18, 21, 22, 23, 24, 25, 27, 29, 32, 33, 34, 36, 38, 39, 40, 45, 46, 48, 49, 51, 61, 66, 67, 75, 79, 80, 86, 87, 92.
...	Enfranchised	54, 58, 59, 70, 73, 73b, 91.
...	Freehold formerly common.	136, 138, 140, 142, 146, 152, 154, 158, 159, 160.

(Signed) A. B.

No. 35.—DEED POLL VESTING LANDS IN PROMOTERS ON FAILURE OF OWNER TO MAKE A GOOD TITLE, PURSUANT TO SECTION 75 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 185). Appndx.

To all to whom these presents shall come.

We, the Company, send greeting. Whereas under the powers and provisions contained in the (special) Act, 18 , and the Acts therewith incorporated, the said company gave notice to *A. B.*, of , that they required to purchase and take the lands mentioned in the schedule hereto for the purposes authorised by the said Act; And whereas the sum of £ has been determined as between the said *A. B.* and the said company by the verdict of a jury, pursuant to the provisions of the said Acts, to be the purchase money or compensation to be paid in respect of the fee simple of the said lands by the said company. And whereas the said company, pursuant to the provisions contained in the said Acts, have deposited the said sum of £ in the Bank of England with the privity of Her Majesty's Paymaster-General, for and on behalf of the Supreme Court of Judicature, to be placed to his account to the credit of *A. B.*'s account. And whereas the said *A. B.*, under the powers and provisions contained in the said Acts, is enabled to sell and convey the fee simple of the said lands and has consented to the said company entering upon and taking the said lands, but has failed to adduce a good title to such lands to the satisfaction of the said company. And whereas the said company have taken the lands from the said *A. B.*, now these presents witness that we, the said company, hereby declare that the said *A. B.* has failed to adduce a good title to such lands to our satisfaction. And we, the said company, execute this deed poll under our common seal pursuant to the provisions in the said Acts contained with the intent that all the estate and interest in the said lands of, or capable of being sold and conveyed by the said *A. B.* shall vest absolutely in us, the said company, and that in respect of the said lands as against the said *A. B.* and all parties on behalf of whom he is by the said Acts enabled to sell and convey, we the said company shall be entitled to immediate possession.

Scaled, &c.

THE SCHEDULE.

The above form will serve as an example of the similar deed polls which promoters may execute under sections 77, 97, 107, 109, 111, 113, and 117 of the Lands Clauses Act, 1845.

No. 36.—APPOINTMENT OF SURVEYOR BY TWO JUSTICES UNDER SECTION 85 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 222).

Whereas it has been made to appear to us, the undersigned *W. X.* and *Y. Z.*, being two of Her Majesty's justices of the peace assembled and acting together at , that the Company, the promoters of the undertaking authorised under the Act and the Acts incorporated therewith, are desirous of entering upon and using lands [described in the schedule hereto and in a notice to treat dated, &c.,] which they are empowered to purchase before an agreement shall have been come to or an award made or verdict given for the purchase money or compensation to be paid by them in respect of such lands. And whereas the said company have applied to us to appoint a surveyor under section 85 of the Lands Clauses Consolidation Act, 1845, to deter-

APPENDIX.

Appendix. mine the value of such lands or the interest therein which can be sold or conveyed. Now, therefore, we in pursuance of the powers vested in us do hereby appoint *M. N.* to be the surveyor to determine the value of such lands or the interest therein which *A. B.* mentioned in the said notice to treat has or is enabled to sell and convey, and also the amount of compensation to be paid by them in respect of such lands. Given under our hands this _____ day of _____ 18____, at _____ W. I. Y. L.

SCHEDULE

No. 37.—NOTICE OF INTENTION TO APPLY TO BOARD OF TRADE TO APPOINT A SURVEYOR UNDER THE RAILWAY COMPANIES ACT, 1867, s. 36 (*ante*, p. 489), WHICH AMENDS AS REGARDS RAILWAYS SECTION 85 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 222).

To *A. B.*

Whereas by a certain notice in writing under the hand of the secretary of the _____ Railway Company, dated the _____ day of _____, and served upon you on the _____ day of _____, the powers of the _____ Railway Act, 18____, and the Acts incorporated therewith certain lands and hereditaments [insert description of the lands from the notice to treat]. And whereas no agreement has been come to or award made, or verdict given for the purchase money or compensation to be paid by the said company in respect of your interest in the said lands and hereditaments. And whereas the said company are desirous of entering upon and using the said lands and hereditaments for the purposes of their undertaking under the powers conferred upon them by the Lands Clauses Act. Now we, the said company, hereby give you notice that we intend on the _____ day of _____ next, being not less than seven days from the service upon you of this notice, to apply under section 36 of the Railway Companies Act, 1867, to the Board of Trade for the appointment of a surveyor to determine the value of the interest claimed by you, or which you are under the said Acts enabled to sell, in the said lands and hereditaments and the amount of all damage and injury to be sustained by reason of the exercise of the powers conferred upon us by the 85th section of the Lands Clauses Consolidation Act, 1845, as far as such damage and injury are capable of estimation.

Dated this _____

(Signed) _____

18 ____

Secretary to the _____

Railway Company.

No. 38.—APPLICATION TO BOARD OF TRADE BY A RAILWAY COMPANY FOR APPOINTMENT OF A SURVEYOR UNDER SECTION 36 OF THE RAILWAY COMPANIES ACT, 1867 (*ante*, p. 489), AND SECTION 85 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 222).

To Her Majesty's Commissioners for Trade and Foreign Plantations, commonly called the Board of Trade.
Whereas the _____ Company are desirous under the provisions of the _____ Act, 18____, with which are incorporated the Lands Clauses

Consolidation Act, 1845, and of the Railway Companies Act, 1867, of **Appndx.**
entering upon and using certain lands which they are by the said first
mentioned Act empowered to enter upon, take, and use, and which are
comprised in the copy notice to treat hereunto annexed, and are situate
in the parish of , in the county of , and of which par-
ticulars are contained in the schedule to the said notice, and which are
delineated and described in the plan attached to the said notice,
and are thereon respectively coloured red, which notice was served
upon A. B., of on the day of 18 .

And whereas the said A. B. claims to be interested in the said lands,
and the said company propose under and subject to the powers and
provisions of the said Acts to enter upon and use the same for the
purposes of the said first mentioned Act before any agreement shall
have been come to or award made or verdict given for the purchase
money or compensation to be made by them in respect of such lands,
and to deposit in the bank by way of security according to the pro-
visions of the Lands Clauses Consolidation Act, 1845, such a sum as
shall be determined by a surveyor appointed by you under the pro-
visions of the Railway Companies Act, 1867, to be the value of the said
lands or of the interest therein which the said A. B. is entitled to or
enabled to sell and convey.

And whereas the said does not consent to such entry and
user by the said company as aforesaid, and notice of the intention to
apply to you for the appointment of a surveyor has been given to him
not less than seven days prior to the date hereof, now, therefore, the
said company hereby apply to you to nominate and appoint under the
provisions of the said Acts a surveyor to determine the value of the
said lands.

Dated this day of one thousand eight hundred
and .

Signed on behalf of the company, ✓

Secretary to the said company.

The four following forms are issued by the Board of Trade :—

**No. 39.—APPOINTMENT OF SURVEYOR BY BOARD OF TRADE UNDER
SECTION 85 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 222), AND
SECTION 36 RAILWAY COMPANIES ACT, 1867 (*ante*, p. 489).**

Whereas it has been made to appear to the Board of Trade that
the Company are empowered to purchase certain lands in the
parish of , in the county of , being the portion
coloured on the plan annexed to the notice to treat, dated
the day of 18 , and addressed to (copies of
which plan and notice are annexed hereto), and that the said company
are desirous of entering upon and using the said lands notwithstanding
that no agreement has been come to, nor award made nor verdict given
for the purchase money or compensation to be paid by them in respect
of the said lands. And whereas the said company in pursuance of the
36th section of the Railway Companies Act, 1867, have applied to the
Board of Trade to appoint a surveyor to make the valuation prescribed
by the 85th section of the Lands Clauses Consolidation Act, 1845, in
respect of the said lands.

Appndx.

Now, therefore, the Board of Trade in pursuance of the powers in them vested, do hereby nominate and appoint _____ of _____ to be the surveyor to determine the value of the said lands hereinbefore described or of the interest therein which the said _____ is entitled to or enabled to sell and convey, including the amount of compensation for all damage and injury (if any) to be sustained by reason of the exercise of the powers conferred by the said 85th section as far as such damage and injury are capable of estimation, and do require and direct said _____ to proceed in respect of such valuation in the manner prescribed in the 59th, 60th, 61st, 62nd, and 63rd sections of the Lands Clauses Consolidation Act, 1845.

Signed by order of the Board of Trade this
day of _____ 18 .

An assistant secretary of the Board of Trade.

No. 40.—DECLARATION OF IMPARTIALITY BY A SURVEYOR APPOINTED UNDER SECTION 85 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 222).

I, _____, of _____, surveyor, do solemnly and sincerely declare that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

Made and subscribed in the presence of

Justice of the peace.

No. 41.—VALUATION BY A SURVEYOR APPOINTED UNDER SECTION 85 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 222).

I, the undersigned _____ being the surveyor named in the foregoing nomination to determine the value of the lands in the said nomination mentioned, and having made my valuation concerning the same, and having previously to entering on the duty of making such valuation subscribed the declaration contained at the foot of the said nomination, do hereby determine the value of the said lands at the sum of _____.

Dated this _____ day of _____ 18 .

Witness.

(Signed)

No. 42.—DECLARATION OF CORRECTNESS OF VALUATION BY A SURVEYOR APPOINTED UNDER SECTION 85 OF LANDS CLAUSES ACT, 1845 (*ante*, p. 222).

I, the above-named _____, do hereby declare the foregoing valuation to be correct, and that it includes compensation for all damage and injury to be sustained by reason of the exercise of the powers conferred by section 85 of the Lands Clauses Consolidation Act, 1845, as far as such damage and injury are capable of estimation.

Witness.

(Signed)

Appndx.

43.—BOND WITH SURETIES TO BE EXECUTED WHEN THE PROMOTERS OF THE UNDERTAKING DESIRE TO ENTER AND USE LAND BEFORE PURCHASE, PURSUANT TO SECTION 85 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 222).

[Now all men by these presents, that we, the _____ Company, and B., of _____, and C. D., of _____ (*add if the parties have differed*), being sureties approved of by two justices (*or in the case of railways by Board of Trade*), are jointly and severally held and firmly bound X. Y., of _____, in the sum of £ _____ (*insert the amount to be paid*). For which payment well and truly to be made to the said Y., we, the said company, bind ourselves and our successors. And the said A. B. and C. D. bind ourselves and each of us, and the same, executors, and administrators of ourselves and each of us respectively, firmly by these presents.

Sealed with the common seal of us the said _____ company, and with the respective seals of us, A. B. and C. D.

Dated the _____ day of _____ 18 ____.

Whereas the said company under the powers and provisions contained in the (special) Act, 1891, and the Acts or portions thereof incorporated therewith, have served a notice upon the said X. Y., dated the _____ of _____ that they require for the purposes of the undertaking, the said Acts authorised, to purchase and take the lands and hereditaments described in the schedule hereto, and particularly delineated in the plan hereto annexed and thereon coloured red. And whereas the said X. Y. is entitled to sell and convey the fee simple of the said lands and hereditaments, but no agreement has been come to or an award made, or verdict given for the purchase money or compensation to be paid by the said company in respect of the said lands and hereditaments. And whereas the said company are desirous of entering upon and using the said lands and hereditaments before an agreement has been come to or an award made or verdict given in respect of the said purchase money and compensation, but the said X. Y. does not consent to such entry.

And whereas a surveyor appointed by two justices pursuant to the said Acts has determined the value of the fee simple of the said lands and hereditaments to be a sum of £ _____, and the said company by way of security deposited the said sum of £ _____ in the Bank of England, with the privity of Her Majesty's Paymaster-General, for and on behalf of the Supreme Court of Judicature to be placed to his account to the credit of an account "*Ex parte*" the _____ company.

Now the condition of the above written bond or obligation is such that if the said company or A. B. or C. D. shall pay to the said X. Y. the sum of £ _____ deposit in the Bank of England [for the benefit of the parties interested in the said lands or hereditaments] (a) under the provisions in the said Acts contained, of all such purchase money or compensation, in any manner in the said Acts provided be determined to be payable by the said company in respect of the said lands and hereditaments, together with interest thereon at the rate of five pounds *per centum per annum* from the time of entering on such lands, until such purchase money or compensation shall be paid to the said X. Y. or deposited in the Bank of England [for the benefit of the parties interested in such

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Appendix. lands(s) under the provisions in the said Acts contained, then the above written bond or obligation shall be void otherwise the same shall remain in full force.

(s) These words may be omitted if the owner has a particular interest only see *ante*, p. 227.

No. 44.—COUNTER-NOTICE BY AN OWNER OR LESSEE OF A HOUSE OR OTHER BUILDING OR MANUFACTORY UNDER SECTION 92 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 238).

To the mayor, aldermen, and citizens of the city of _____ day of _____, 18____, notice was served upon me by the mayor, aldermen, and citizens of the city of _____, to the effect that they required to take for the purposes of the improvements to be carried out under the _____ Act, 18____, certain messuages and hereditaments therein described. And whereas I am willing and able to sell and convey the hereditaments are a part only of a house or other building [or manufactory]. And whereas I am willing and able to sell and convey the whole thereof [or any interest in the whole thereof]. Now, therefore, I take notice that I require you to purchase and take the whole of the said house or other building [or manufactory] [or my interest in the whole thereof].

Dated _____ day of _____, 18____.

(Signed) A. B.

No. 45.—NOTICE OF REVOCATION OF NOTICE TO TREAT WHEN THE OWNER HAS GIVEN A COUNTER-NOTICE UNDER SECTION 92 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 238).

To A. B.

Whereas upon the _____ day of _____, a notice was served upon you by the mayor, aldermen, and citizens of the city of _____, stating that they required to purchase and take for the purposes of the improvements to be carried out under the _____ Act, 18____, certain messuages and hereditaments therein described. And whereas you, upon the _____ day of _____, did serve upon the mayor, aldermen, and citizens of the city of _____ a counter-notice requiring them to purchase and take the whole of a certain house or other building [or manufactory] [or the whole of your interest in a certain house or other building] [or manufactory], of which the said messuages and hereditaments are a part only, and stating that you were willing and able to sell and convey the whole [or your interest in the whole] thereof. Now, therefore, the said mayor, aldermen, and citizens of the city of _____ give you notice that they revoke and withdraw the said notice served upon you on the _____ day of _____, 18____.

Dated the _____ day of _____, 18____.

By Order,
Town Clerk.

**No. 46.—ASSENT TO COUNTER-NOTICE GIVEN UNDER SECTION 92 OF APPENDX.
THE LANDS CLAUSES ACT, 1845 (*ante*, p. 238).**

To

The trustees under the will of the }
late namely, }

Whereas the mayor, aldermen, and citizens of the city of (hereinafter called "the corporation"), did, by a notice dated the day of , give you notice that by virtue and under the authority of the Improvement Act, 189 , and the Act or Acts or parts of Acts incorporated therewith, the corporation were authorised and required to purchase and take for the purposes of the said Act the lands and hereditaments specified in the schedule to the said notice annexed in which lands and hereditaments you are or are reputed to be interested, or which by the said Acts or some or one of them, you are enabled to sell and convey or release to the corporation. And by the said notice the corporation gave you further notice that they were willing to treat with you for the purchase of the said lands and hereditaments and as to the compensation to be paid to you for the damage that might be sustained by reason of the execution of the said works authorised by the said Act, or for which the said premises were required as aforesaid. And the corporation did thereby demand from you the particulars of your estate and interest in the said lands and hereditaments and of the claims made by you in respect thereof. And whereas by a notice dated the day of , and duly served on your behalf upon the corporation, you, the said trustees, gave the corporation notice that the lands and hereditaments so as aforesaid comprised in and described in the hereinbefore firstly-recited notice to treat were a part only of a house or other building or manufactory known as " ," and that you were willing and able to sell and convey your interest in the whole of the said hereditaments, and by your said notice you required the corporation to purchase and take your interest in the whole of the said house or other building or manufactory. Now, therefore, I, the undersigned , &c., of the city of aforesaid, and solicitor and agent for and on behalf of the corporation do hereby, on behalf of the corporation, give you, the said trustees, notice that the corporation do hereby accept your said notice dated the day of and assent to your requirement that they should purchase and take the whole of the said lands and hereditaments referred to in your said notices and known as " ," situate in or near to street, and street in the city of aforesaid.

Dated this day of .

(Signed)

Solicitor for the Corporation and Town
Clerk of the city of .

**No. 47.—NOTICE BY LESSEE TO PROMOTERS OF UNDERTAKING REQUIRING
THE RENT TO BE APPORTIONED UNDER SECTION 119 OF THE LANDS
CLAUSES ACT, 1845 (*ante*, p. 266).**

To Company.

Whereas by an indenture dated the day of , and made between X. Y. (lessor) of the one part and me, the undersigned A. B. of the other part, all (insert parcels as in lease) were demised to

Appndx. me for the term of _____ years from the _____ day of _____, 18____, at a rent of £____, which lands are more particularly delineated on the plan annexed hereto and coloured green and red. And whereas by a notice dated the _____ day of _____, and duly served upon me, the company under the powers contained in the (special) Act and Acts therewith incorporated required to purchase and take so much of said demised lands as are coloured red on the plan hereto annexed. Now, therefore, I give you the said company notice that I require that the rent payable in respect of the lands comprised in such indenture of lease be apportioned between the lands so required and the residue of such lands, in accordance with the provisions of the said Acts.

Dated this _____ day of _____, 18____.
(Signed)

A. B.

PLAN.

No. 48.—SUMMONS TO APPORTION RENT UNDER SECTION 119 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 266).

To A. B. (lessee) and C. D. (lessor).

Information has this day been laid before me, X. Y., one of Her Majesty's justices of the peace for the county of _____ by _____ Company, that the said company have by a notice served upon A. B., required under the powers of the (special) Act of 189____ and the Acts therewith incorporated to purchase and take part of the lands comprised in and demised by an indenture of lease dated the _____ day of _____, 18____, and made between the C. D. of the one part and the said A. B. of the other part, for a term of _____ years from the day of _____, 18____, which said term is still unexpired, at the yearly rent of £____, and that the said A. B. has given notice to the said company that he requires that the rent payable in respect of the lands comprised in such indenture of lease be apportioned between the lands so required and the residue of such lands, and that no agreement has been made in respect of such apportionment.

These are therefore to command you and each of you, in Her Majesty's name, to be and appear on the _____ day of _____, at _____ o'clock, at the _____ court before such two of Her Majesty's justices of the peace as may then be sitting for the purpose of determining such apportionment in accordance with the provisions of the said Acts, and take notice that if you do not appear such apportionment will be made in your absence.

Given under my hand and seal this _____ day of _____.
(Signed) _____ (L.B.)
Justice of the Peace for the county of _____.

No. 49.—APPORTIONMENT OF RENT BY TWO JUSTICES PURSUANT TO SECTION 119 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 266).

At the petty sessions of _____, for _____ division of the county of _____, holden at _____ on the _____ day of _____.

Whereas [*recite lease and parcels, rent and notice to treat for part of the said lands as in No. 47*]. And whereas no apportionment has been agreed to of the said rent between the land comprised in the said

notice and the residue of the lands comprised in and demised by the said indenture of lease. And whereas, upon information laid by the said Company, the said *A. B.* and *C. D.* were summoned to appear before us at court at the date and hour mentioned in the said summons for the purpose of determining such apportionment. Now, therefore, we, the undersigned, being two of Her Majesty's justices of the peace for the county of assembled and acting together at having heard the evidence adduced by the said *A. B.* and *C. D.* and the said company in pursuance of the power contained in the said Acts, apportion the said yearly rent of £ as follows, namely, the sum of £ shall be the yearly rent payable for that part of the lands required by the said company, and the sum of £ shall be the yearly rent payable for the residue of the said lands comprised in the said indenture of lease.

Given under our hands and seals this day of
(Signed) (L.S.)
Justices of the Peace for the county of

No. 50.—NOTICE TO PERSON HAVING NO GREATER INTEREST IN THE LANDS TAKEN THAN AS TENANT FOR A YEAR OR FROM YEAR UNDER SECTION 121 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 267).

To *A. B.*

Take notice that the Company in pursuance of their powers under the Act, 18, and the Acts incorporated therewith, require you to give up possession of the lands occupied by you and particularly described in the schedule hereto and coloured red on the annexed plan on the day of next, before the expiration of your term or interest therein; and further, that you are entitled to compensation for the value of your unexpired term or interest in such lands and for any just allowance which ought to be made to you by an incoming tenant, and for any loss or injury you may sustain, and [*if a part only of such lands be required*] compensation for the damage done to you in your tenancy by severing the lands held by you, or otherwise injuriously affecting the same, and to have the amount of such compensation determined by two justices if no agreement is come to between you and the said Company about the same.

Dated the day of
(Signed)
Secretary to the Company.
SCHEDULE OF LANDS.

No. 51.—SUMMONS TO APPEAR BEFORE TWO JUSTICES FOR ASSESSMENT OF COMPENSATION PAYABLE TO A YEARLY TENANT UNDER SECTION 121 OF THE LANDS CLAUSES ACT.

In the [county of . Petty sessional division of].
Information has this day been laid before me, one of Her Majesty's justices of the peace for the county of , by *A. B.*, that you, the Company, did on the day of , serve a notice on him requiring him to give up possession of certain lands and here-

Appdx. ditaments therein described and occupied by him as a yearly tenant, and that no agreement has been made as to the amount of compensation payable to him for the value of his unexpired term or interest in the said lands and hereditaments, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, and [*if a part of such lands be required*] for the damage done to him in his tenancy by severing the lands held by him or otherwise injuriously affecting the same.

You are therefore summoned in Her Majesty's name to be and appear on the _____ day of _____, at _____ o'clock in the forenoon, at _____, before such two of Her Majesty's justices of the peace as may then be sitting, in order that the amount of the said compensation may then and there be determined.

Given under my hand and seal this day of , 18 .
(Signed) (L.S.)

Justice of the Peace for the [county] aforesaid.

No. 52.—ASSESSMENT OF COMPENSATION BY TWO JUSTICES OF THE
INTEREST OF A YEARLY TENANT UNDER SECTION 121 OF THE
LANDS CLAUSES ACT, 1845 (*ante*, p. 267).

Whereas the Company did on the _____ day of _____, in pursuance of the provisions of the _____ Act, 18 [the company's special Act], and the Acts incorporated therewith, serve upon A. B. a notice requiring him to give up possession of certain lands and hereditaments therein described and occupied by the said A. B. as a yearly tenant; and whereas no agreement has been made as to the amount of compensation for the value of the unexpired term or interest of the said A. B. in the said lands and hereditaments, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain [if a part only of the lands were required], and for the damage done to him in his tenancy by severing the lands held by him or otherwise injuriously affecting the same. And whereas on the information of the said A. B. the said company were, by a summons dated the _____ day of _____, 18 _____, commanded to appear before us at the time and place therein mentioned :

Now therefore we, the undersigned, being two of Her Majesty's justices of the peace for the county of _____, assembled and acting together, having heard the evidence adduced by the said A. B. and the said company, do determine the sum of £ _____ to be the amount of compensation to be made and paid to the said A. B. in respect of his interest in the said lands and hereditaments.

Given under our hands this _____ day of _____, 18 ____.

(Signed) _____ C. D.
 _____ E. F.

No. 53.—NOTICE UNDER SECTION 122 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 270), TO PRODUCE LEASE OR GRANT.

To A. B.

Whereas you claim compensation in respect of an unexpired term or interest under a lease or grant of the lands comprised in a notice to treat served upon you by the _____ Company on the _____ day of _____, 19____. Take notice that the _____ Company require you to

produce the lease or grant in respect of which you make such claim, or the best evidence thereof in your power, and further, that if after this demand made in writing by the Company such loan or grant, or such best evidence thereof, be not produced within twenty-one days, you will be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Dated the day of .

(Signed)
Secretary to the Land Company.

NO. 54.—OFFER OF PRE-EMPTION OF SUPERFLUOUS LAND TO OWNER OF LANDS FROM WHICH THEY WERE SEVERED UNDER SECTION 128 OF THE LANDS CLAUSES ACT, 1845 (*ante*, p. 282).

To *A. B.* (the owner from whom they were severed).

Whereas the lands and hereditaments mentioned in the schedule hereto were acquired by the Company under the provisions of the Act and of the Acts incorporated therewith, but are not required for the purposes thereof; and the said company desire to absolutely sell and dispose of the said lands and hereditaments. Now therefore we, the said company, before disposing of the said lands in pursuance of the provisions contained in section 128 of the Lands Clauses Consolidation Act, 1845, hereby first offer to sell the same to you, *A. B.*, as the person entitled to the lands from which the same were severed. And take notice, that if you desire to purchase such lands you must signify your desire in that behalf to the said company within six weeks from the receipt hereof or your right of pre-emption in respect of such lands shall cease.

Dated the day of , 18 .

(Signed) *O. D.*,
Secretary to the Company.

The following four forms have been adapted from the forms (Nos. 10, 11, 16, and 17) given in the schedule to the Highway Act, 1835, the alterations having been rendered necessary by subsequent legislation:—

NO. 55.—LICENSE FROM JUSTICES FOR A DISTRICT COUNCIL TO DIG, ETC., MATERIALS UPON INCLOSED LANDS FOR THE REPAIR OF HIGHWAYS (*ante*, p. 754).

(to wit.) } To the District Council of ,
 } in the said county.

Whereas by an Act passed in the fifth and sixth years of the reign of King William the Fourth, intituled the Highway Act, 1835, the surveyor is authorised to dig, get, take, and carry away materials lying upon any lands or grounds within the parish for which he is appointed for the use and benefit of the highways; but not without the consent of the occupier or owner of such lands or grounds or his agent, or a license from the justices in sessions assembled; and whereas by the Local Government Act, 1894, there have been transferred to the district councils all the powers, authorities, duties, and liabilities of surveyors of highways within their district. And whereas it appears to us, Her Majesty's justices of the peace of the said county, and acting within

Appndx. the said [district] at sessions assembled, upon the oath of *C. D.* (surveyor or clerk to the district council), that the said district council have applied to *A. B.*, of , for his consent to dig, get, take, or carry away materials from the lands called or known by the names of and in his occupation (or of which he is owner or in the occupation of *J. K.*, or of which *J. K.* is the owner, and the said *A. B.* his agent), within the said [parish, &c.] for the purposes aforesaid, and that the said materials are necessary for the repairs of the highways, and that the said *A. B.* hath refused to permit the same to be dug, got, taken, and carried away, and the said *A. B.* having been duly summoned to appear before us to show cause why such permission should not be granted, and having appeared before us accordingly [or having sent his steward, or agent, or *C. D.* on his behalf, to attend us on that occasion, or, but not having appeared], we have heard what has been alleged, and taken the said matter into consideration, and are of opinion that the said materials are necessary and ought to be dug, got, taken, and carried away for the purposes aforesaid. Therefore we do hereby give our license for the said district council to dig, get, take, and carry away the same accordingly, the said district council making satisfaction for the same, and also for the damage done to such lands, in the manner directed by the said Acts.

Given under our hands the day of , one thousand eight hundred and .

J. P.
K. P.

NO. 56.—LICENSE FROM JUSTICES TO GET MATERIALS FOR THE REPAIR OF THE HIGHWAYS IN ANOTHER PARISH BESIDES THAT WHEREIN SUCH MATERIALS ARE TO BE EMPLOYED (*ante*, p. 754).

(to wit.) { At sessions , held at , in the
hundred, &c., of , in the said county, by justices
of the peace for the said county acting within the
on the day of .

It appearing to us, upon evidence this day received, that sufficient materials cannot conveniently be had within the waste land, common grounds, rivers or brooks, nor in the enclosed lands or grounds lying within the [parish, &c.] of , in the said hundred, for the repairs of the highways within the said [parish], nor in the waste lands, common grounds, rivers or brooks within the [parish] of , adjoining the said [parish] of , we do hereby give our license to the district council of , in which district is included the parish of to search for, dig, get, and carry away materials within the enclosed lands or grounds of *C. D.* within the said [parish] of , it appearing from evidence before us that there are proper materials within the said lands for the purposes aforesaid lying convenient to the said highways, and that after such materials shall be so taken there will be sufficient left for the use of the highways within the said parish of , upon the said district council making satisfaction for the same, and also for the damage done to such lands, in the manner directed by the Act made and passed in the fifth and sixth years of the reign of King William the Fourth, intituled The Highway Act, 1835, subject to such restrictions as are therein contained.

Given under our hands the day and year above written.

J. P.
K. P.

Appendix.

No. 57.—ORDER OF TWO JUSTICES FOR WIDENING OF HIGHWAY
(*ante*, p. 755).

{ We, , two of His Majesty's justices of the
(to wit). } peace for the said county, acting within the
of , within the said county, having, upon a view, found that a
certain part of the highway between and , in the
[parish, &c.] of , in the said [hundred], for the length of
yards or thereabouts, and particularly described in the plan hereunto
unxer, is for the greatest part thereof narrow, but may be conveniently
enlarged and widened by adding thereto, from the lands and grounds
of and of the length of yards or thereabouts,
particularly described in the plan hereunto annexed, which we think
will widen and enlarge the same, and be much more commodious to the
public, do hereby order that the said highway be widened and enlarged
accordingly, and that the district council for the district of
where the said old highway lies, do forthwith proceed to treat and make
agreement with the said and for the recompense to be
made for the said ground and for the making such ditches and fences as
shall be necessary, in such manner, with such approbation, and by
pursuing such measures and directions in all respects as are warranted
and prescribed by the statute made in the fifth and sixth years of the
reign of King William the Fourth, intituled The Highway Act, 1835;
and in case such agreement shall be made as aforesaid, we do order an
equal assessment, not exceeding the rate of in the pound, to be
made, levied, and collected upon all and every the parties liable to the
payment of the highway rate in the said of , and that
the money arising thereupon be paid and applied in making such recom-
pense and satisfaction as aforesaid, pursuant to the directions of the
said Act.

A. B.

C. D.

**No. 58.—CERTIFICATE FROM THE SAID JUSTICES TO THE COURT OF
QUARTER SESSIONS** (*ante*, p. 755).

To the justices of the peace at the general quarter sessions to be held
t , in the said county, the day of , one thousand
eight hundred and .

We, the within named A. B. and C. D., do hereby certify to the said
court of quarter sessions, that we made and signed the within order, and
that with our approbation and by our direction the said district council
dealt with the said and for the said lands required for
the purposes aforesaid, but was not able to make any agreement for that
purpose with them or either of them, and that they tendered to the
said the sum of , and to the said the sum
of as a recompense for the said ground, and for the making the
said ditches and fences which he [or they and each of them] refused to
receive.

A. B.

C. D.

Appndx. *The following Forms are under The Metropolitan Paving Act, 1817, commonly called Michael Angelo Taylor's Act :—*

No. 59.—FORM OF ADJUDICATION UNDER MICHAEL ANGELO TAYLOR'S ACT (57 GEO. 3, C. XXIX.), s. 80, BY RESOLUTION (*ante*, p. 776).

Whereas it is desirable to widen so much of X. Street as lies between A. Lane and B. Street, the vestry do hereby adjudge that the houses, walls, buildings, lands, tenements, and hereditaments, or portions thereof respectively, situate on the _____ side of X. Street, and coloured red on the plan marked D., prevent the widening of the said thoroughfare, and that the possession, occupation, and purchase of the said respective houses, walls, buildings, lands, and hereditaments will be necessary for carrying out the said improvement, and that notices thereof be served upon the several owners and occupiers of all such properties of whatever nature, tenure, kind or quality for the purposes aforesaid, as provided by the statute 57 Geo. 3, c. xxix., and that it be referred to _____ to take such steps as may be necessary to carry the above resolution into effect.

No. 60.—NOTICE TO TREAT UNDER MICHAEL ANGELO TAYLOR'S ACT (57 GEO. 3, C. XXIX.), s. 80 (*ante*, p. 776).

To A. B. and C. D., and all other the owner or owners, occupier or occupiers of, and all other persons interested in the premises herein-after mentioned and described.

I, the undersigned, do hereby for and on behalf of the Board of Works for the _____ District, who are the persons having the control of the pavements within the said district, and by direction of the said board give you and each of you notice, that for the improvement of the streets and public places of the said district, and for the public advantage the said board in pursuance of the powers enabling them in that behalf, have resolved forthwith to alter, widen, and extend X. Passage, C. Market, between T. Street and P. Street, and Q. Street, and that the said board have adjudged that the houses, buildings, land, tenements and hereditaments known as Nos. 2 and 3, X. Passage aforesaid, project into, obstruct and prevent the said board from so altering, widening and extending X. Passage aforesaid, and that for such purpose the possession, occupation, and purchase of the same houses, buildings, land, tenements, and hereditaments (which hereditaments are delineated on the plan hereto annexed, and are thereon distinguished by the colour pink) will be necessary, and I do further give you notice, that the said board have employed me on their behalf to treat, contract, and agree with you and each of you and all other the owner or owners, occupier or occupiers of the said hereditaments and premises, Nos. 2 and 3, X. Passage aforesaid, for the purchase thereof, and of the respective estates and interests therein, of all persons seized or possessed thereof or interested therein, or of or in all or any part or parts thereof, and I do hereby demand from you particulars of your estate and interest in the said hereditaments and premises and of the claim or claims made by you in respect thereof, and desire that such particulars and claim be forwarded to me at the undermentioned address within twenty-one days from this date.

Dated this _____ day of July, 189 ____.

Solicitor for the Board of Works for the _____

District.

N.B.—It is requested that the claim be made out on the form herewith :—

No. 61.—PARTICULARS OF CLAIM TO ACCOMPANY PRECEDING NOTICE. Appndx.

Name, Description and Abode of Claimants.	Situation and Description of Property.	Nature of Interest.	Particulars of Leases, and Names and Addresses of Occupiers.	Particulars of Claim.	Name and Address of Claimant's Solicitor.	Name and Address of Claimant's Surveyor (if any).

No. 62.—OFFER BY DISTRICT BOARD FOR LANDS FOR WHICH NOTICE TO TREAT HAS BEEN GIVEN UNDER 29 GEO. 3, C. XXIX. (*ante*, p. 776).

To A. B. and C. D.

Whereas the Board of Works for the District did on or about the day of , 189 , give you two notices in writing under the hand of the solicitor for the said board respectively, dated the day of , 189 , that the said board required to purchase the hereditaments and premises described in the said notices being part of the site of the premises formerly known as No. 1, X. Passage, also premises known as Nos. 2 and 3, X. Passage, all or near C. Market, in the county of London, and which hereditaments and premises for the better description thereof were delineated in the plans respectively attached to the said notices, and were thereon distinguished by the colour pink. And further that the said board had employed M. N., of , their solicitor, to treat with you for the purchase of the said hereditaments and premises. And whereas you have refused to agree with the said M. N. as to the amount of compensation to be paid for the purchase of your estate and interest in the said hereditaments and premises. And whereas by two letters dated respectively the and days of , 189 , the one being under the hand of the said M. N., and the other under the hands of Messieurs P. Q., your solicitors, it was agreed between you and the said Board of Works for the District, that your claims for compensation in respect of the hereditaments and premises comprised in the said two notices shall be treated as one claim. Now take notice that we, the Board of Works for the District, do hereby offer you the sum of £ in full satisfaction of your said claim in respect of the hereditaments and premises comprised in the said two notices. And further take notice that unless within fourteen days from the service of this notice upon you, the offer herein contained is accepted by you, we shall put in force the powers vested in us by statute to have the amount of compensation to be paid to you for the purchase of your estate and interest in the said hereditaments and

Appndz. premises assessed and awarded by a jury, and that if the jury shall award the same or a less sum than the sum hereby offered, the costs, charges, and expenses of procuring such compensation to be assessed and awarded as aforesaid, and also of assessing and awarding the same will be borne and paid by you.

Given under the common seal of the Board of Works for the
District, this day of , 189 .

The common seal of the Board of Works for the
hereunto affixed in the presence of

District was

M. N.,

Clerk of the Board.

**No. 63.—NOTICE TO LANDOWNERS OF INTENTION TO SUMMON JURY
UNDER 57 GEO. 3, C. XXIX., s. 82 (*ante*, p. 778).**

To *A. B.* and *C. D.*

Whereas the Board of Works for the District, who are the persons having the control of the pavements in the said district for the improvement of the streets and public places in the said district, and for the public advantage, and in pursuance of the powers enabling them in that behalf, have resolved forthwith to alter, widen, and extend the highway, known as *X. Passage*, *C. Market*, between *C. Street* and *P. Street* in the said district. And whereas the said board have adjudged that the land and hereditaments being part of the site of premises known as *No. 1, X. Passage*, and also premises known as *Nos. 2 and 3, X. Passage*, all near *C. Street* aforesaid, and which land, hereditaments, and premises for the better description thereof were delineated and distinguished by the colour pink on the plans respectively annexed to two certain notices to treat under the hand of the solicitor to the said board duly served upon you, and respectively dated the day of , 189 , project into, obstruct, and prevent the board from so altering, widening, and extending the said highway, and that for such purpose the possession, occupation, and purchase of the said land, hereditaments, and premises of which you are the owner is necessary. And whereas the said board appointed *M. N.*, their solicitor, to treat, contract, and agree with the owners of the land, hereditaments, and buildings adjudged necessary for the alteration, widening, and extension aforesaid, and certain negotiations have taken place between the said *M. N.* and yourselves with a view to the purchase by the said board of the said land and hereditaments. And whereas by two letters dated respectively the and days of , 189 , the one being under the hand of the said *M. N.*, and the other under the hands of *Messieurs P. Q.*, your solicitors, it was agreed between you and the said Board of Works for the District, that your claim for compensation in respect of all the land, hereditaments, and premises comprised in the said two notices to treat should be treated as one claim. And whereas on the day of , 189 , a notice was served on you under the common seal of the said board referring to the negotiations which has taken place between the said *M. N.* and yourselves, and intimating that as you had refused to agree the amount of the compensation to be paid to you for the purchase of your estate and interest in the said land, hereditaments, and premises the board would put in force their statutory powers, unless within the time therein mentioned you came to

an agreement with the said board in regard to such compensation. **Appndx.**
 And whereas you have still refused to agree to the terms upon which the said board are willing to purchase the said land, hereditaments and premises. Now this is to give you notice, that the said board in pursuance of the powers conferred upon them by the statutes 57 Geo. 3, c. 29, and 18 & 19 Vict. c. 120, have resolved to take the steps prescribed by the statute to impanel a jury before the justices of the peace for the county of London at a court of general or quarter sessions to be holden for the said county, and to obtain their verdict and the judgment of the justices in relation to the premises; and I am directed by the said board to give you notice that they will at the expiration of fourteen days from the service of this notice in accordance with the statutes in that behalf, issue their warrant or precept to the sheriff of the county of London to impanel, summon, and return a jury at such Court of quarter sessions for the purpose of obtaining such verdict and the judgment of the justices in relation to the premises.

Dated the day of , 189 .

M. N.,
 Clerk to the Board of Works for the District.

No. 64.—FORM OF WARRANT TO SHERIFF TO SUMMON A JURY, PURSUANT TO 57 GEO. 3, c. 29, s. 82 (ante, p. 778).

To the sheriff of the county of London.

County of } Whereas the Board of Works for the
 London to wit. } District, who are the persons having the control of the pavements in the said district for the improvement of the streets and public places in the said district, and for the public advantage and in pursuance of the powers enabling them in that behalf, have resolved forthwith to alter, widen and extend the highway known as X. Passage, C. Market, between C. Street and P. Street in the said district, and the said board have duly adjudged that the land and hereditaments being part of the site of premises, known as No. 1, X. Passage, and also premises, known as Nos. 2 and 3, X. Passage, all near C. Street aforesaid (and which land, hereditaments, and premises for the better description thereof were delineated and distinguished by the colour pink on the plans respectively annexed, to two certain notices to treat under the hand of the solicitor to the said board, duly served upon A. B. and C. D., and respectively dated the day of 189), project into, obstruct, and prevent the board from so altering, widening, and extending the said highway, and that for such purpose the possession, occupation, and purchase of the said land, hereditaments, and premises of which the said A. B. and C. D. are the owners, is necessary.

And whereas, the said board appointed M. N., their solicitor, to treat, contract, and agree with the owners of the land, hereditaments, and buildings adjudged necessary for the alteration, widening, and extension aforesaid, and certain negotiations have taken place between the said M. N. and the said A. B. and C. D., with a view to the purchase by the said board of the said land and hereditaments.

And whereas, by two letters dated respectively the and days of , 189 , the one being under the hand of the said M. N. and the other under the hands of Messrs. P. and Q., solicitors for the said A. B. and C. D., it was agreed between them and the said

Appndx. Board of Works for the district that the claims of the said A. B. and C. D. for compensation in respect of all the land, hereditaments, and premises comprised in the said two notices to treat should be treated as one claim.

And whereas, the said A. B. and C. D., being persons possessed of or otherwise interested in the said land, hereditaments, and premises have not agreed with the said Board of Works or with any person or persons authorised by them for the sale and conveyance to the said Board of Works of the estate and interest of the said A. B. and C. D.

Now, therefore, we, the said Board of Works for the District, do, by this our warrant or precept issued under and by virtue and in pursuance of the powers and authorities for that purpose given by the statutes 57 Geo. 3, c. 29 and 18 & 19 Vict. c. 120, and of every other power enabling us in this behalf, hereby authorise, direct, and require you to empanel summon and return a competent number of substantial and disinterested persons qualified to serve on juries not less than 48 or not more than 72—out of which persons so to be empanelled, summoned, and returned a jury of 12 men are to be drawn by some indifferent person, to be by the said Board of Works appointed in such manner as juries for the trial of issues joined in Her Majesty's High Court of Justice, are by the Juries Act, 1825, or by any statute or statutes altering or amending the same, directed to be drawn, which said persons so to be empanelled, summoned, and returned are hereby required to come and appear before the justices of the peace for the said county at the court of quarter sessions of the peace to be holden by adjournment from the day of last at the in and for the said county of London on the day of 189 , at 10 of the clock in the forenoon precisely, and to attend such court of quarter sessions from day to day until discharged by the said court and the said jury are then upon their oaths to enquire of the value of the said land, hereditaments, and premises being part of the site of premises known as No. 1, X. Passage, also premises known as Nos. 2 and 3, X. Passage, all near C. Street aforesaid, and of the proportionable value of the respective estates and interests of all and every person and persons seised or possessed thereof or interested therein, or of or in any part or parts thereof with whom the said Board of Works may have failed to agree. And also to assess and award the sum or sums of money to be paid to such person or persons, party or parties respectively, for the purchase of the said land, hereditaments, and premises and of such respective estates and interests therein, and also for goodwill, improvements, or any injury or damage whatsoever that may affect any such person or persons, party or parties, either as leaseholders or tenants at will and otherwise as directed by the 82nd section of the said Act of 57 Geo. 3, c. 29.

Witness our common seal this day of 189 .

CROWN OFFICE RULES, 1886.

MANDAMUS.

60. Application for a prerogative writ of *mandamus* shall, during the sittings, be made to a Divisional Court of the Queen's Bench Division by motion for an order *nisi*; and in the vacation to a judge in chambers for a summons to show cause, upon its being shown to the satisfaction of such judge that the matter is urgent. Provided that this rule shall not

apply to any application for a writ of *mandamus* under 45 & 46 Vict. Appndx. c. 50, s. 225.

61. Notice shall be given by the order *nisi* for a *mandamus* to every person who by the affidavits on which the order is moved shall appear to be interested in or likely to be affected by the proceedings, and to any person who in the opinion of the Court or judge ought to have such notice.

62. The order *nisi* shall be served upon each person to whom notice is given by the order, as well as the party whom the order requires to show cause.

63. Any person, whether he has had notice or not, who can make it appear to the Court or judge that he is affected by the proceeding for a writ of *mandamus* may show cause against the order *nisi* or summons, and shall be liable to costs in the discretion of the Court or a judge if the order should be made absolute, or the prosecutor obtain judgment.

64. The order absolute for a *mandamus* need not be served, but the costs of service of the order absolute may be allowed in the discretion of the taxing officer, where the writ is not issued.

65. If the writ of *mandamus* is directed to one person only the original must be personally served upon such person, but if the writ be directed to more than one, the original shall be shown to each one at the time of service, and a copy served on all but one, and the original delivered to such one.

66. When a writ of *mandamus* is directed to companies, corporations, justices, or public bodies, service shall be made upon such and so many persons as are competent to do the act required to be done, the original being delivered to one of such persons, except where by statute service on the clerk or some other officer is made sufficient service.

67. The Court or a judge may, if they or he shall think fit, order that any writ of *mandamus* shall be peremptory in the first instance.

68. Every writ of *mandamus* shall bear date on the day when it is issued, and shall be tested in the name of the Lord Chief Justice of England. The writ may be made returnable forthwith, or time may be allowed to return it, either with or without terms, as the Court thinks fit. A writ of *mandamus* shall be in the Form in the Appendix No 37, with such variations as circumstances may require.

69. Any person by law compellable to make any return to a writ of *mandamus* shall make his return to the first writ.

70. Where a point of law is raised in answer to a return or any other pleading in *mandamus*, and there is no issue of fact to be decided, the Court shall, on the argument of the point of law, give judgment for the successful party, without any motion or judgment being made or required.

71. Where under Rules 70 and 136 the applicant obtains judgment he shall be entitled forthwith to a peremptory writ of *mandamus* to enforce the command contained in the original writ, and the judgment shall direct that a peremptory writ do issue.

72. No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a writ of *mandamus* issued by the Supreme Court or any judge thereof.

73. When it appears to the Court that the respondent claims no right or interest in the subject matter of the application, or that his functions are merely ministerial, the return to the writ, and all subsequent proceedings down to judgment shall still be made and proceed

Appndx. in the name of the person to whom the writ is directed, and, if the Court thinks fit so to order, may be expressed to be made on behalf of the persons really interested therein. In that case the persons interested shall be permitted to frame the return and conduct the subsequent proceedings at their own expense; and if judgment is given for or against the applicant it shall likewise be given for or against the persons on whose behalf the return is expressed to be made: and if judgment is given for them, they shall have the same remedies for enforcing it as the person to whom the writ is directed would have in other cases.

74. Where, under the last preceding rule, the return to a writ of *mandamus* is expressed to be made on behalf of some person other than the person to whom the writ is directed, the proceedings on the writ shall not abate by reason of the death, resignation, or removal from office of that person, but they may be continued and carried on in his name; and if a peremptory writ is awarded, it shall be directed to the successor in office or right of that person.

75. In any case of *mandamus*, in which a proceeding by way of interpleader may be proper, the provisions of Order 57 of the Rules of the Supreme Court, 1883 (Interpleader), shall be applicable, so far as the nature of the case will admit.

76. No order for the issuing of any writ of *mandamus* shall be granted, unless at the time of moving an affidavit be produced by which some person shall depose upon oath that such motion is made at his instance as and if the writ be granted, the name of such person shall be endorsed on the writ as the person at whose instance it is granted.

77. Every application for the costs of a *mandamus* shall, unless the Court or a judge shall otherwise order, be made before the fifth day of the sittings next after that in which the right to make such application accrued, and shall be upon notice of motion to be served eight days before the day named therein for moving.

78. The party moving for costs shall leave at the Crown Office Department a notice for the production in Court of all the affidavits filed in support of, and in opposition to, the original order.

79. Every application for a writ of *mandamus* to justices to enter continuances and hear an appeal shall be made within two calendar months after the first day of the sessions at which the refusal to hear took place, unless further time be allowed by the Court or a judge, or unless special circumstances appear by affidavit to account for the delay to the satisfaction of the Court.

ORDERS IN THE NATURE OF MANDAMUS.

80. An application for an order in the nature of a *mandamus* to justices, or to a county court judge, or to justices to state and sign a case, shall be by motion for an order *nisi* (in the same manner as is provided in Rule 60).

37.

WRIT OF MANDAMUS.

VICTORIA, by the Grace of God, &c.

To of greeting.

Whereas by [here recite Act of Parliament, or charter, if the act required to be done is founded on either one or the other]. And whereas we have

been given to understand and are informed in the Queen's Bench **Appndx.** Division of our High Court of Justice before us that [*insert necessary inducement and overments*]. And you the said were then and there required by [*insert demand*] but that you the said well knowing the premises, but not regarding your duty in that behalf then and there wholly neglected and refused to [*insert refusal*] nor have you or any of you at any time since in contempt of us and to the great damage and grievance of as we have been informed from their complaint made to us. Whereupon we, being willing that due and speedy justice should be done in the premises as it is reasonable, do command you the said and every of you firmly enjoining you that you [*insert command*] or that you show us cause to the contrary thereof, lest by your default the same complaint should be repeated to us and how you shall have executed this our writ make known to us in our said Court at the Royal Courts of Justice, London, forthwith then returning to us this our said writ, and this you are not to omit.

Witness, &c.

To be indorsed.

By Order of Court [or of Mr. Justice].

At the instance of .

This writ was issued by, &c.

38.

RETURN TO WRIT OF MANDAMUS.

The return may either be indorsed on the back of the original writ, or engrossed on a separate parchment schedule.

When indorsed on the back of the original writ.

The answer of [*the parties to whom the writ is directed*] to this writ. We, the, &c. [*the defendants*], to whom this writ is directed, do most humbly certify and return to our Sovereign Lady the Queen at the time and place in this writ mentioned, that we have, &c. [*when the return is an obedience to the writ, the words of the mandatory part of the writ should be recapitulated in the past instead of the future tense*]. As by the said writ we are commanded.

(To be signed by the parties making the return, or a sufficient number to form a quorum, unless they be a corporate body, in which case it is sufficient to attach the corporate seal.)

When the return is engrossed on a separate schedule.

Indorse the original writ [or the copy served] thus :

The return of to this writ [*or if the return is obedience, say, the execution of this writ*] appears in the schedule hereunto annexed.

The answer of .

[To be signed or sealed as above.]

Appndx.

ACTION OF MANDAMUS.

Order 53 of the Rules of the Supreme Court.

1. The plaintiff in any action in which he shall claim a *mandamus* to command the defendant to fulfil any duty, in the fulfilment of which the plaintiff is personally interested, shall indorse such claim upon the writ of summons.

2. The indorsement shall be in the form given in section 4 of Appendix A., Part 3.

This is the form: —

The plaintiff's claim is, for &c. , and for a *mandamus* commanding the defendant to, &c.

3. If judgment be given for the plaintiff, the Court or judge may by the judgment command the defendant either forthwith, or on the expiration of such time and upon such terms as may appear to the Court or a judge to be just, to perform the duty in question. The Court or a judge may also extend the time for the performance of the duty.

4. No writ of *mandamus* shall hereafter be issued in an action; but a *mandamus* shall be by judgment or order, which shall have the same effect as a writ of *mandamus* formerly had.

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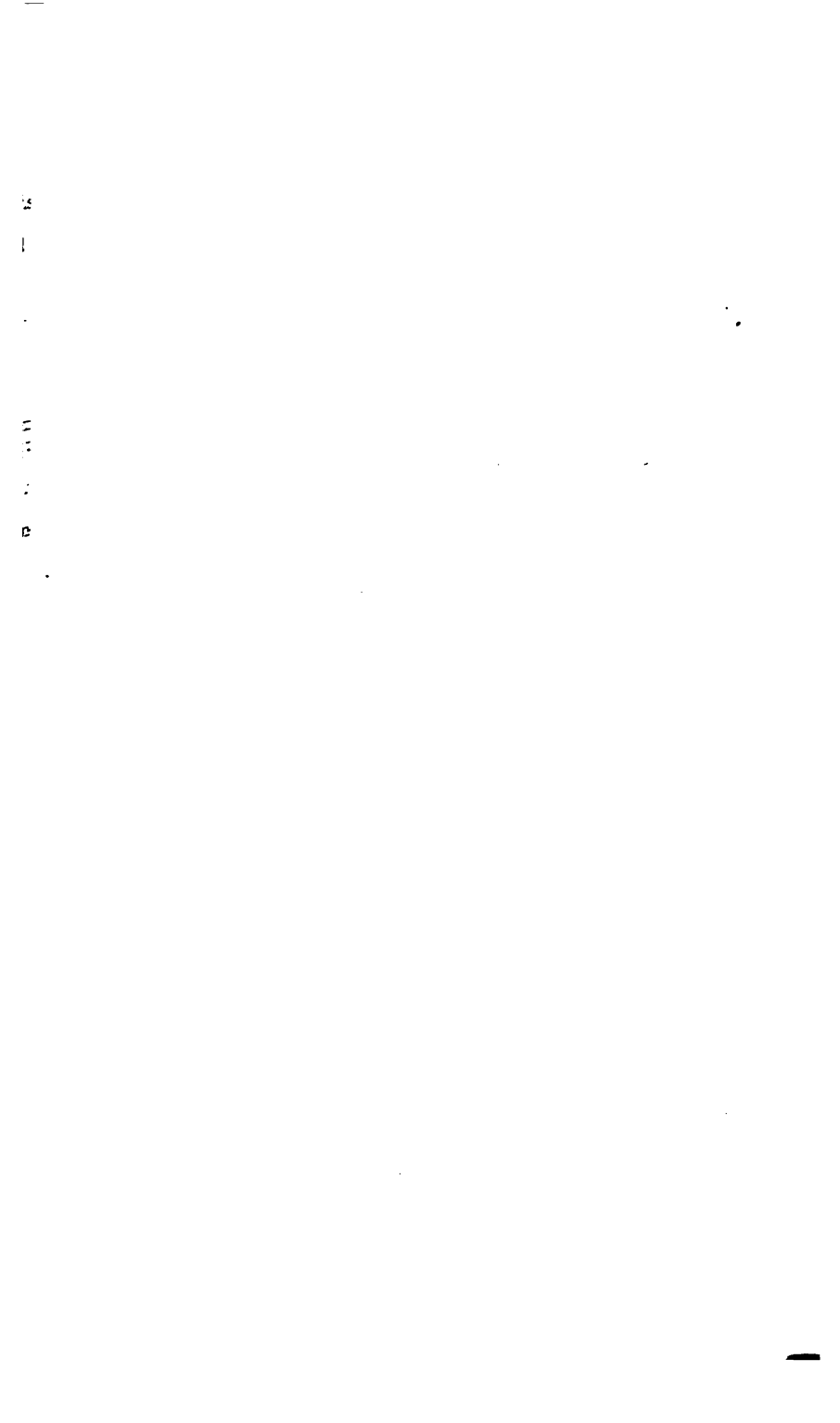
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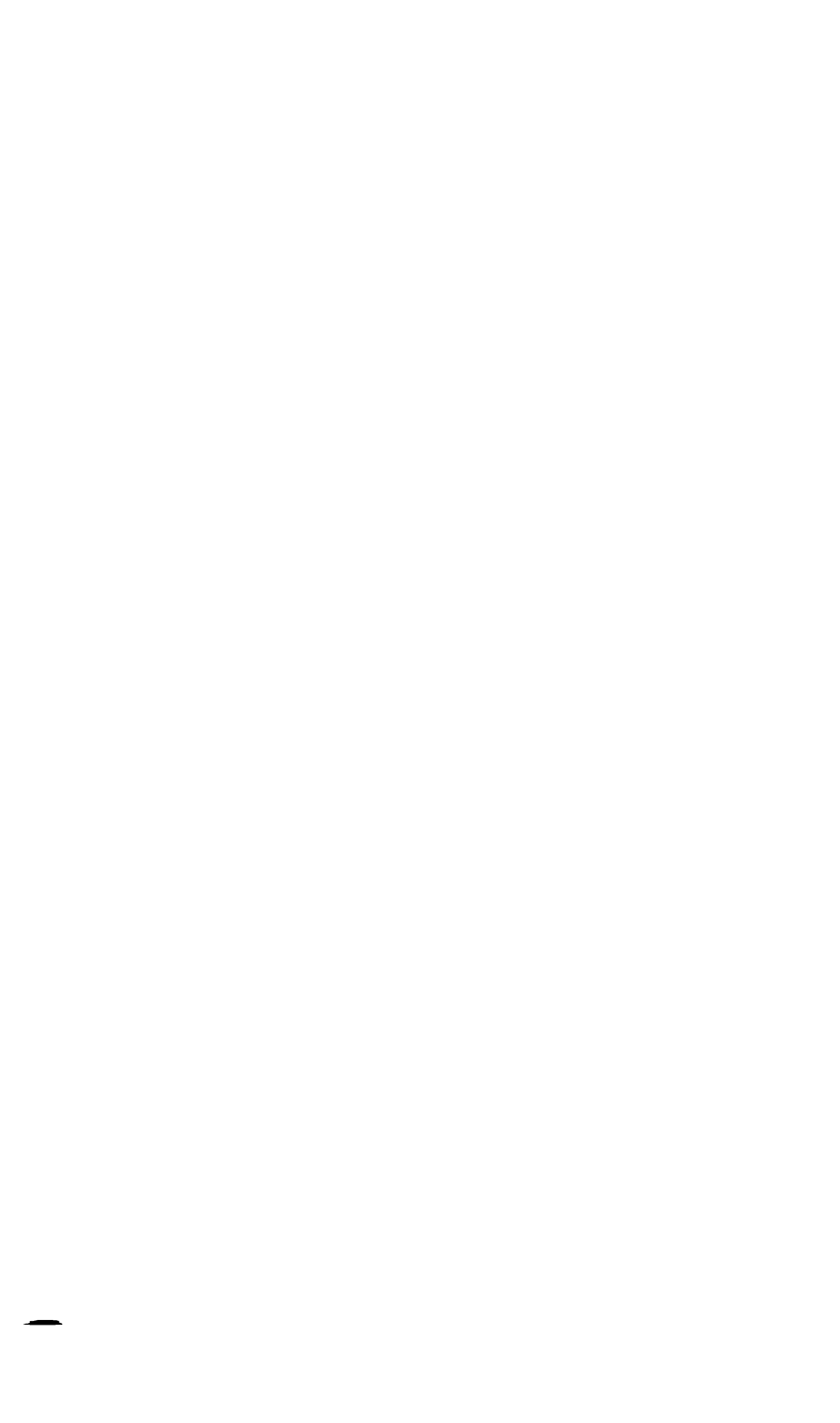
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